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OFFICIAL REPORT
(HANSARD)

Wednesday, May 9, 2018

The Honourable GEORGE J. FUREY,
Speaker

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Debates Services: D'Arcy McPherson, National Press Building, Room 906, Tel. 613-995-5756
Publications Centre: Kim Laughren, National Press Building, Room 926, Tel. 613-947-0609

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THE SENATE

Wednesday, May 9, 2018

The Senate met at 2 p.m., the Speaker in the chair.

Prayers.

SENATORS' STATEMENTS

THE LATE ROBIN W.W. FRASER

Hon. Diane F. Griffin: Colleagues, today I rise to mark the passing of Robin W.W. Fraser, whom I remember as a friend as a committed advocate for nature.

Robin grew up in Manitoba and in Ontario and attended Upper Canada College and Trinity College. After studying law at Osgoode Hall, Robin joined Fraser, Beatty, Tucker, McIntosh & Stewart in 1956. He became a partner at that firm in 1963 and was appointed Queen's Counsel in 1983. He retired in 1995. In 2000, he was honoured with a Doctorate of Sacred Letters *honoris causa* from Trinity College.

Robin balanced a successful law career with an active life outside of work. He enjoyed playing the bagpipes, Scottish country dancing, bird watching, cross-country skiing, kayaking and wilderness canoeing.

I knew Robin Fraser because of his work in nature advocacy. He served on the boards of the Canadian Parks and Wilderness Society, the Wildlands League of Ontario and the Nature Conservancy of Canada, and I had the honour of serving with him as a director on the board of Bird Studies Canada.

I extend my sympathies to his family and friends. Robin brought great fun and humour everywhere he went, and his presence is greatly missed.

RECOGNIZING HISTORICAL DISCRIMINATION AGAINST CHINESE PEOPLE IN VANCOUVER

Hon. Mobina S. B. Jaffer: Honourable senators, the month of May is Canada's Asian Heritage Month. It is a time to reflect on and celebrate the contributions that Canadians of Asian heritage continue to make, but we should also acknowledge the errors from the past to make sure these wrongs are never repeated.

On Sunday, April 22, the City of Vancouver formally apologized to Chinese Canadians for past legislation, regulations and policies that discriminated against them. In front of a crowd of 500 people at the Chinese Cultural Centre, including Senator Woo, Mayor of Vancouver Gregor Robertson said:

> This is an important day for council and all Vancouverites to come together and recognize historical wrongdoings committed against Chinese people and to build a better future together.

Honourable senators, as you are aware, Chinese citizens were not allowed to vote between 1886, the year the City of Vancouver was incorporated, and 1948. Chinese citizens were prevented from running for public office and from owning properties in specific areas of the city. Citizens of Chinese descent were also forbidden from working in professional fields such as law, medicine, banking and retail, and they were prohibited from civic employment from 1890 to 1952.

Additionally, our federal government imposed a head tax Chinese citizens were made to pay. In 1885, this tax was $50 per head. In the early 1900s, it rose to $500 per individual. The head tax broke many families apart.

These examples of past policies, just a few of the 160 wrong policies and laws that targeted the Chinese community, were ways to stigmatize and dehumanize the Chinese Canadians of Vancouver. Honourable senators, these policies were purely discriminatory legislation. In a statement, John Horgan, Premier of British Columbia, said:

> We must recognize, remember and condemn the historic discrimination which so many members of the Chinese community endured.

I would like to thank our colleague Senator Woo, who thoughtfully invited me to the formal apology to Chinese Canadians by the City of Vancouver. I thank Premier Horgan and Mayor Robertson for their work in bringing Vancouverites and all British Columbians together. Thank you for unifying us.

This initiative will help Vancouver and Canada overcome its past to welcome and embrace all newcomers. Apologies mark the beginning of respect, healing and forgiveness.

NEW BRUNSWICK FLOOD 2018

Hon. Carolyn Stewart Olsen: Colleagues, I rise today to speak to a critical issue in New Brunswick. I represent that province.

The Saint John River's annual flood has reached historic levels in southern New Brunswick. The Emergency Measures Organization, EMO, is warning about increasing flooding and noting that there is now a significant health risk from sewage systems that have been overwhelmed.

Geoffrey Downey, an EMO spokesperson, has publicly said — and I'm telling you, we're plain-spoken in New Brunswick:

> The river's been compromised with who knows what? Raw sewage, gas, oil, debris.

And the Director of EMO said it's even worse than that; the water is hitting our fans.

> You get manure piles around all of that going into the river system. I'm sure that there are animals that are drowned that are in the river system.

In rural areas, this is a catastrophe, as it means that homeowners in areas affected by the flooding were not able to use their well water. The Coast Guard and the Red Cross have been in the area encouraging people to evacuate, and more than 1,000 people have fled their homes for the security of their relatives or hotels across the province. Volunteer evacuation notices have gone out to thousands of New Brunswickers in affected areas.

Evacuation, however, is not an option for many. They have neither the financial means nor the resources to abandon their homes and their possessions.

Even more troubling, the Trans-Canada Highway, an essential artery for the province, remains closed as of Monday between Fredericton and Moncton. This is on top of the more than 100 other roadways which media reports suggest could be closed all of this week.

Senators, our primary role is to serve our provinces as their representatives at the federal table. We must use the power this chamber affords us to advance the interests of our people.

I have reached out to the New Brunswick government, the members of Parliament here, and now I reach out to the Government Representative in the Senate. Time is of the essence, senators, and I urge him to use his position to have disaster funds released expeditiously so that New Brunswickers can get on with the cleanup and recovery.

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of Dr. Kyungdoo Kim, Original Coach and Father of Team Kim, Korean Women's Curling Team, Founder and President of Curling Association of Korea; Mr. Minchan Kim, Curling Olympian in the 2018 Pyeongchang Winter Olympics; and Dr. Melvin Lee. They are the guests of the Honourable Senator Martin.

On behalf of all honourable senators, I welcome you to the Senate of Canada.

Hon. Senators: Hear, hear!

OLYMPIC AND PARALYMPIC GAMES 2018

CONGRATULATIONS TO TEAM CANADA

Hon. Chantal Petitclerc: : Honourable senators, unless you are planning a major career change and are very confident that you can win one yourself, today may be your only chance to hold and see a gold medal. That's because Team Canada is in the house.

• (1410)

[Translation]

Throughout the day today, our athletes will be on Parliament Hill, so that we can recognize and celebrate their success at the Olympic and Paralympic winter games in Pyeongchang. They will be in room 237-C from 3 p.m. to 5 p.m. I invite everyone to go meet them and congratulate them.

There is much to celebrate. My colleague, Senator Deacon, reminded us yesterday that the most recent games were Canada's best ever. Team Canada's exceptional performance was no coincidence and it was not just the result of the hard work of our athletes, coaches and support staff. Many would agree that we are reaping the rewards of a profound shift in the culture of high-performance sports in Canada.

[English]

I believe it to be true. At one point in our sport history, people started to think and wonder, "You know what? It's fun to be good, but how about being great?"

Many people even put a date to this radical change in our sport philosophy. In February 2004, eight months after winning the rights to host the Vancouver games, Canada's 13 winter National Sport Organizations, the Canadian Olympic Committee, the Canadian Paralympic Committee, Sport Canada, WinSport Canada and VANOC met to create a plan that would change how we view high performance in Canada.

Part of this became known as Own the Podium, but there is more to it. There was a profound change in how we view our sport potential as a country, a clear conviction that started to grow in our sport organizations, our clubs and most importantly in the hearts of our athletes.

When it comes to high performance, we can and we want to be the best in the word, and we did it. Our athletes today are proof of it. The sub-message it sends to all kids in Canada is, in my view, equally important. By showing us how great they are, our athletes tell our kids, "If we can be the best in the world, so can you." That, I believe, is worth more than any number of medals.

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of Margaret Lees and Shirley Street. They are the guests of the Honourable Senator McCallum.

On behalf of all honourable senators, I welcome you to the Senate of Canada.

Hon. Senators: Hear, hear!

THE LATE HONOURABLE THELMA J. CHALIFOUX

NAMING OF THE CHALIFOUX SCHOOL

Hon. Yvonne Boyer: Honourable senators, I rise today to honour the late Senator Thelma Chalifoux.

It has just been announced that a new junior high in southeast Edmonton will be named after her.

Senator Thelma Chalifoux grew up in Calgary, although her roots were in the Lac St. Anne area. She was born in the Great Depression during a storm in February. It was said that made her a tough and strong woman. One of five children, her mother helped support the family by trading garden-grown vegetables. Her father was a residential school survivor and served in the First World War, working as a carpenter and a farmhand.

She studied sociology at Lethbridge Community College and later took courses in construction estimation at the Southern Alberta Institute of Technology. She taught her children the term *otipemisiwak*, which means "be your own boss." That is how she lived and taught others around her to live.

She was a fieldworker for the Metis Association of Alberta, ran a safe house for domestic violence victims, and produced Metis culture and history curriculum resources for elementary students.

She was a woman of many firsts. She founded the Friendship Centre in Slave Lake. She created a brand new radio program called Smoke Signals. She was the first Indigenous woman to serve in the University of Alberta Senate. She was the first Metis woman to receive an Aboriginal Achievement Award in 1994, a Woman of Vision Award, the Bill Irwin Award and was the first Indigenous woman appointed to the Canadian Senate in 1997.

> "It's so deserving of her work," Chalifoux's daughter, Sharon Morin, said of the school bearing her mother's name.
>
> "I want (the students) to know she was not afraid to do anything," she said. "She was tireless in her work. Starting out in the late 60s, early 70s, the idea of her being a vocal woman was not always popular. She would always say, 'That's too bad. They better listen, because I've got lots to say.'"

Senator Chalifoux retired from this house in 2004 and received an honorary doctorate at the University of Toronto that year for her advocacy work. After her retirement, she continued as a voice for the Metis, serving as an Elder in Residence at the Northern Alberta Institute of Technology and founding the Michif Cultural & Metis Resource Institute in St. Albert with a mission to preserve, protect and promote Metis culture in northern Alberta.

"Thelma was a champion for Metis rights and a valued member of the Metis community," said the Metis Nation of Alberta in a statement after her death. She leaves behind a legacy of activism and culture.

The Chalifoux School is scheduled to open in the fall of 2020. Her legacy will not be forgotten. Thank you.

ROUTINE PROCEEDINGS

THE SENATE

NOTICE OF MOTION TO AFFECT QUESTION PERIOD ON MAY 22, 2018

Hon. Diane Bellemare (Legislative Deputy to the Government Representative in the Senate): Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

> That, in order to allow the Senate to receive a Minister of the Crown during Question Period as authorized by the Senate on December 10, 2015, and notwithstanding rule 4-7, when the Senate sits on Tuesday, May 22, 2018, Question Period shall begin at 3:30 p.m., with any proceedings then before the Senate being interrupted until the end of Question Period, which shall last a maximum of 40 minutes;
>
> That, if a standing vote would conflict with the holding of Question Period at 3:30 p.m. on that day, the vote be postponed until immediately after the conclusion of Question Period;
>
> That, if the bells are ringing for a vote at 3:30 p.m. on that day, they be interrupted for Question Period at that time, and resume thereafter for the balance of any time remaining; and
>
> That, if the Senate concludes its business before 3:30 p.m. on that day, the sitting be suspended until that time for the purpose of holding Question Period.

[*Translation*]

ADJOURNMENT

NOTICE OF MOTION

Hon. Diane Bellemare (Legislative Deputy to the Government Representative in the Senate): Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

> That, when the Senate next adjourns after the adoption of this motion, it do stand adjourned until Tuesday, May 22, 2018, at 2 p.m.

[*English*]

CANADA-UNITED STATES INTER-PARLIAMENTARY GROUP

CANADIAN/AMERICAN BORDER TRADE ALLIANCE CONFERENCE, MAY 7-9, 2017—REPORT TABLED

Hon. Michael L. MacDonald: Honourable senators, I have the honour to table, in both official languages, the report of the Canadian Delegation of the Canada-United States Inter-Parliamentary Group respecting its participation at the Canadian-American Border Trade Alliance Conference, held in Ottawa, Ontario, from May 7 to 9, 2017.

MEETING WITH MEMBERS OF THE U.S. HOUSE OF REPRESENTATIVES, SEPTEMBER 14-16, 2017—REPORT TABLED

Hon. Michael L. MacDonald: Honourable senators, I have the honour to table, in both official languages, the report of the Canadian Delegation of the Canada-United States Inter-Parliamentary Group respecting its participation at the meeting with members of the U.S. House of Representatives, held in Windsor, Ontario, from September 14 to 16, 2017.

ANNUAL NATIONAL CONFERENCE OF THE COUNCIL OF STATE GOVERNMENTS, DECEMBER 14-16, 2017—REPORT TABLED

Hon. Michael L. MacDonald: Honourable senators, I have the honour to table, in both official languages, the report of the Canadian Delegation of the Canada-United States Inter-Parliamentary Group respecting its participation at the annual National Conference of the Council of State Governments, held in Las Vegas, Nevada, United States of America, from December 14 to 16, 2017.

ANNUAL WINTER MEETING OF THE NATIONAL GOVERNORS ASSOCIATION, FEBRUARY 23-25, 2018—REPORT TABLED

Hon. Michael L. MacDonald: Honourable senators, I have the honour to table, in both official languages, the report of the Canadian Delegation of the Canada-United States Inter-Parliamentary Group respecting its participation at the annual winter meeting of the National Governors Association, held in Washington D.C., United States of America, from February 23 to 25, 2018.

QUESTION PERIOD

NATURAL RESOURCES

TRANS MOUNTAIN PIPELINE

Hon. Larry W. Smith (Leader of the Opposition): Honourable senators, my question is for the government leader in the Senate, and it is on the Trans Mountain pipeline expansion project.

Three weeks ago the Prime Minister promised legislation that would assert and reinforce the Government of Canada's jurisdiction in this matter. However, yesterday the Minister of Natural Resources backtracked on this commitment, only saying that legislation is one of the options being discussed.

Minister Carr would not say if the government will indeed introduce legislation later this month. Time is running out for the Prime Minister to make up his mind on this issue. Kinder Morgan's deadline is three weeks from tomorrow, and there are not many sitting weeks left in the parliamentary calendar. A simple question for you: Will the government introduce legislation on the Trans Mountain expansion, yes or no?

• (1420)

Hon. Peter Harder (Government Representative in the Senate): I thank the honourable senator for his question and his ongoing interest in this matter. It is shared by the Government of Canada. This is a priority, as the Prime Minister and ministers responsible have made clear. It is the view of the Government of Canada that the efforts under way directly with the parties concerned are important and will lead to announcements and actions by the Government of Canada to ensure this project goes forward.

Senator Smith: Is that a yes or a no? I had a lot of concussions when I played football.

The government's indecision regarding legislation on Trans Mountain and the overall failure to provide certainty to our oil and gas sector has contributed to the situation we are currently witnessing where investment is leaving Canada by the billions of dollars.

For example, just yesterday, we learned that Royal Dutch Shell, which is a very large international organization, one of the largest oil and gas companies in the world, is selling its entire stake in Canadian Natural Resources. Could the government leader please tell us, with Trans Mountain in jeopardy, investment leaving Canada, and the thousands of energy workers out of their jobs, where is the leadership going?

Senator Harder: Again, I want to reiterate that this project is viewed by the Government of Canada as important for Canada. It is taking the necessary steps to ensure the project moves forward. With respect to the question that was raised with regard to Shell and the sale of its stake, those are private sector transactions which happen from time to time because there are buyers.

FOREIGN AFFAIRS AND INTERNATIONAL TRADE

DIPLOMATIC RELATIONS WITH IRAN

Hon. Linda Frum: Leader, yesterday you stated that the Government of Canada is not engaging in any discussions regarding diplomatic re-engagement with the Iranian regime until Maryam Mombeini is allowed to return to her home in Canada. That is admirable, as far as it goes, but for nearly 10 years, Canadian permanent resident Saeed Malekpour has been held captive on trumped-up charges in Iran's Evin Prison. Will your government extend the same assurances to the family of Saeed Malekpour and cease all diplomatic talks until his release is secured?

Hon. Peter Harder (Government Representative in the Senate): Thank you, honourable senator, for your question. What I was wanting to assure all senators is that the talks that are being held with the government of Iran are with respect to the Canadians that are detained, to assure their release. That is the priority of the government at this moment with respect to its bilateral engagement with the government of Iran.

NATIONAL REVENUE

INCOME SPLITTING

Hon. Pamela Wallin: My question is for the Honourable Senator Harder, and it's regarding the issue of income splitting. My email is still filled with these questions.

A recent CFIB survey indicates that nearly half of small business owners split income with family members. Most importantly, however, is the fact that 67 per cent of small businesses are owned by men while just 12 per cent are owned by women. Their proposed rules do not appear to account for the many informal and unpaid roles that a spouse may take in a small business in addition to sharing many of the associated risks with the owner. That means women will be unfairly denied income.

Did the government conduct a gender-based analysis of income splitting issues before it proposed changes? And, if not, will the government commit to such an inquiry immediately before moving ahead?

Hon. Peter Harder (Government Representative in the Senate): I thank the honourable senator for her question. Let me assure the house that the government is very sensitive to all matters of gender equality in examining its legislation, and the commitments with respect to GBA+ have been made by the government hereto in consideration of cabinet documents. In the specific case in question, I'd have to inquire to assure myself and report back. My understanding of the income splitting rules are that where work is done, it is recognized in the income splitting that is afforded a personal income tax statement.

Senator Wallin: I realize that's there, but the red tape burden is also increasing in order to — I guess from the government's point of view — ensure that the system isn't being abused in any way. Again, that puts the emphasis on the spouses, many of whom actually do the paperwork in these small businesses, and most of those spouses are women.

Senator Harder: Again, I appreciate the concern raised by the honourable senator. It is the objective of the government to achieve that balance between integrity of programs and appropriate scrutiny of those who apply for this benefit and the benefit itself.

TRANSPORT

LONG-HAUL INTERSWITCHING

Hon. Diane F. Griffin: My question is to the Leader of the Government in the Senate, and it's regarding Bill C-49 and the message that was received from the other place.

Why did the government support providing long-haul interswitching to northern British Columbia and northern Quebec, and why did the government favour regional concerns over CN's economic profitability in those cases but not in the case of the Maritimes?

Hon. Peter Harder (Government Representative in the Senate): I thank the honourable senator for her question. The matter is obviously one of great interest across the aisle. Let me take the time to be very precise.

The amendments passed on October 3 of last year by the Standing Committee on Transport, Infrastructure and Communications in the other place would allow northern Quebec shippers to switch traffic in Montreal.

The intention of this amendment was to capture shippers who were directly north of the Quebec-Windsor corridor and within the eastern and western boundaries of the corridor.

I should clarify that the Port of Belledune is not being treated differently than the Gaspé Peninsula with respect to access to LHI. Shippers in central Quebec, directly north of the exclusion corridor, face a different situation than shippers in the Maritimes as they are more captive to a single rail line as their only viable transportation option.

In addition, shippers in the Maritimes have readier access to marine transportation and a better highway system. The government carefully assessed the benefits of providing access to shippers in the Maritimes to LHI against the potential risks to CN lines in the Maritimes, which are critical transportation links for the region and country.

The proposed amendment by this chamber, which was the subject of the honourable senator's motion, would have applied to a significant portion of the tonnage moving on CN's network in New Brunswick and Nova Scotia. Subjecting this traffic to LHI could impact the future viability of CN's rail services in Eastern Canada, particularly on the northern-most branch line in New Brunswick.

It was for this reason that the government respectfully disagrees with the Senate's proposed amendment as it considered the amendments that were sent from this place.

LHI was designed to strike an important balance between providing captive shippers with a means of accessing an alternative carrier and ensuring the continued ability of railways to invest in their networks.

Removing the exclusion that prevents shippers originating or terminating traffic in the Maritimes could distort this delicate balance that is being struck and risk significant negative consequences.

Senator Griffin: I live in the Maritimes, and I'm aware of what the remedies would be in terms of shipping. By the way, I'll state that Prince Edward Island doesn't even have a railway, but we have a wonderful rail trail if you're into bicycling; it's perfect.

I'm looking at this from a regional interest. It's my understanding that the government declined to support the maritime long-haul interchange because the Maritimes will continue to have access to other remedies in the legislation.

I would like you to expand upon what those remedies are. You did mention it, but I'm wondering, for instance, why it would be different from the Port of Prince Rupert in northern British Columbia, except that we would have the Port of Montreal, but that's not in the Maritimes. That doesn't help Saint John or Halifax or Belledune.

Senator Harder: I thank the honourable senator for her follow-up question. As she well knows, certain geographic regions have been excluded from LHI, including the highly competitive and congested Quebec, Windsor and Vancouver-Kamloops corridors. Exceptions to this exclusion were included for captive shippers in some parts of northern Quebec and British Columbia in the amendments I referred to that came from the other place.

• (1430)

These amendments were tightly framed to minimize the impacts on the network, such as increased congestion in the corridors. Further opening up of the corridor to traffic would disrupt the important balance the LHI remedy is intended to achieve. Everybody knows that CN is the only Class I railway serving destinations in the Maritimes. Providing access to LHI to shippers in the Maritimes must be balanced against the potential risks of the future viability of CN services in Eastern Canada, which are critical to transportation links for the region.

LHI is one of many remedies that would become available to shippers. Shippers in the Maritimes will continue to have access to other shipper remedies in the act, many of which are being improved by the bill, including a definition of adequate and suitable rail service that confirms railways should provide shippers with the highest level of service that can reasonably be provided in the circumstances.

Second, the ability for shippers to seek reciprocal financial penalties in their service arrangements with railways to enhance accountability.

Third, access to new informal dispute-resolution services, which would allow shippers to seek agency assistance in resolving disputes, while maintaining anonymity.

Fourth, more accessible and timely remedies for shippers on both rates and service to support balanced negotiations, such as: a shortened process for disputes about a railway's level of service from 120 to 90 days; allowing shipper participation in arbitration to settle a rate dispute; final-offer arbitration to choose whether the arbiter's decision should stand for one or two years — currently it stands, as senators will know, for only one year — and increased financial thresholds for shippers participating in the streamlined arbitration process for rate disputes to give more small and medium-sized shippers this option; new reporting requirements for railways on rate services and performance to enhance system transparency.

Finally, I would note that the Minister of Transport has committed himself and his officials to holding meetings with stakeholders to discuss how they can derive the full benefits from the new and improved measures of the bill presently before us, should this legislation receive, and when this legislation receives, Royal Assent.

[*Translation*]

JUSTICE

GROWING CANNABIS AT HOME

Hon. Jean-Guy Dagenais: My question is for the Leader of the Government in the Senate. The Senate is doing a tremendous amount of work to improve Bill C-45 on cannabis. We have not yet finished our work and your Prime Minister says that he is prepared to fight the Province of Quebec, which wants to exercise its legitimate right to prohibit the growing of cannabis at home for health and public safety reasons. Even though this provincial right is unanimously recognized by the members of this chamber, I understand that the Prime Minister is prepared to challenge the provinces' jurisdiction in this matter.

Leader, will you defend the Senate's position to your boss, if he persists, or are you going to let him deny and trample on the jurisdiction of Canada's provinces to control the production of cannabis?

[*English*]

Hon. Peter Harder (Government Representative in the Senate): Again, I thank the honourable senator for his question. He'll know that the issue that he is discussing is one that is presently before the Senate committee, and it will be considering this issue, along with other issues relating to the bill before it. We, in this chamber, will find an opportunity to bring debate and bring forward amendments. Should they find majority support here, I will, as I've done in the past, exercise my responsibility as not only the representative of the government in this chamber but to represent this to the government.

TRANSPORT

TRANSPORTATION MODERNIZATION BILL

Hon. Rosa Galvez: My question is for the Government Representative in the Senate, and it also concerns the message from the House of Commons on Bill C-49, the transportation modernization act.

I brought forward two amendments in committee, both of which were passed unanimously. The amendment regarding final-offer arbitration was rejected by the other place. The amendment regarding agency own-motion power, which, according to the amendment passed at committee, would permit the agency to conduct investigations to determine whether a rail shipper is fulfilling its services obligations. It was modified. The modified version of the agency own-motion power amendment detailed in the message stipulates that any investigations initiated by the agency through its own-motion power are subject to terms and conditions imposed by the minister.

Stakeholders are concerned about data transparency and fairness for shippers if the minister must give authorization for the agency to investigate. This will weaken the ability of the agency to address rail transportation issues, such as delays or service standards.

Senator Harder, please clarify the terms by which the agency may request ministerial authorization to perform investigations, what evidence is required to make a request to the minister for authorization to investigate in the case of a complaint and whether refusals by the minister to investigate will be made public in a timely manner.

Hon. Peter Harder (Government Representative in the Senate): Again, I thank the honourable senator for her question. This is an area, as she herself referenced, that she has been advocating on in the work of the committee, and I commend her for that. The complexity of commercial relationships involved between railways and shippers makes this a different scenario from typical consumer-protection situations. Providing the agency with the authority to investigate rail level-of-service issues on its own motion, subject to the authorization of the minister, strikes, in the government's view, an appropriate balance enabling the agency to investigate systemic rail-services issues, while still retaining an appropriate level of government oversight.

The legislation does not outline any specific process for the agency to follow when requesting the minister's authorization for an own-motion investigation into these rail-service issues. In fact, such authorization may be provided proactively by the minister, without a request by the agency. The legislation does not outline a specific set of criteria for the minister to consider when making a decision regarding an own-motion investigation. The legislation provides the minister with broad discretion to determine an authorization on an own-motion investigation into rail service issues, with no specific threshold identified in the legislation.

If the agency does provide the minister with such a request, the minister would consider all relevant information at his disposal. This could include any information provided by the agency as part of its request to initiate the investigation and could also include Transport Canada's internal analysis, as well as other sources of information and factors, including the nature, extent, prevalence, duration and severity of the rail-services issue being experienced.

It is in the Government of Canada's interest to resolve any systemic issues slowing down freight-rail traffic in our country, and the minister will not hesitate to take action in this regard and will welcome any assistance from the CTA.

ORDERS OF THE DAY

TRANSPORTATION MODERNIZATION BILL

BILL TO AMEND—MESSAGE FROM COMMONS—MOTION FOR CONCURRENCE IN COMMONS AMENDMENTS AND NON-INSISTENCE UPON SENATE AMENDMENTS—DEBATE

On the Order:

> Resuming debate on the motion of the Honourable Senator Harder, P.C., seconded by the Honourable Senator Bellemare:
>
> That the Senate agree to House of Commons amendment 4, as well as House of Commons amendments 1, 2 and 3 made to its amendments 6, 7(b) and 9 to Bill C-49, An Act to amend the Canada Transportation Act and other Acts respecting transportation and to make related and consequential amendments to other Acts;
>
> That the Senate do not insist on its amendments 1(a)(i), 1(a)(ii), 1(b), 3, 4, 5(a)(i), 5(a)(ii), 5(a)(iii), 5(b), 7(c), 8 and 10(a), to which the House of Commons has disagreed; and
>
> That a message be sent to the House of Commons to acquaint that house accordingly.

Hon. Patricia Bovey: Honourable senators, I rise today to speak to the government response to the Senate amendments proposed on Bill C-49, An Act to amend the Canadian Transportation Act.

Colleagues, this has been quite an odyssey that this legislation has wound its way through since its introduction in the other place on May 15, 2018, almost a year ago to the day.

Since it arrived in this place, we in the Senate and in our Transport and Communications Committee have provided, and continue to provide, diligence in the study of this bill.

It is a difficult bill, a difficulty compounded by the fact that this legislation arrived on our doorstep with warnings that it should not be amended because, as we were told, it struck a

perfect balance between all stakeholders involved. Further, it was clear from the minister's messages that we were to deal with it quickly, ideally before last Christmas, only a few weeks of actual sitting time after it was received.

As a new senator in this place, I was taken aback by this warning as I was told, when I was appointed, that my job was to improve legislation, and that takes reflection. I have also been surprised by comments that we have taken a long time. When one takes the breaks between sittings into account, we actually acted expeditiously, given the number of witnesses that we should have and did hear and those who wanted to appear before the committee.

So you can imagine how I feel now, after hearing about a perfect balance being struck by this legislation versus the testimony we heard in committee from many stakeholders. Indeed, as has been mentioned here, particularly in the last several days, efforts were made to deal with the most time-sensitive parts of this bill, the need to get grain to market.

• (1440)

Senator Griffin proposed splitting the grain aspects of bill out and passing them, leaving us with time to deal with the rest of the legislation. This offer was declined. Senator Plett put forward the proposal that the government enact temporary measures, as they had done before under Bill C-30. This too was declined.

I do not feel that this was a wise decision on the part of the government. It felt like a false timeline was being placed on what course our Senate study would follow.

Colleagues, as you have heard, the Standing Senate Committee on Transport and Communications held 12 meetings, heard from some 76 witnesses and received many written submissions. It quickly became apparent that this bill was as contentious as it was perfectly crafted. For example, the introduction of a passenger bill of rights is a major step forward for air travellers, but like so many aspects of this bill, this good news is tempered by fact that the actual bill of rights will be filled out through regulations.

We need to be remain focused on just what the end result of that process will be. I suggest that our Standing Senate Committee on Transport and Communications monitor and seek regular updates on how the processes proceed.

We as senators have had to struggle with the issue of safety versus privacy when it comes to the installation of locomotive voice and video recordings, or LVVRs. I think most of us can recognize that this technology can be a useful tool in promoting safety with its use by the Transportation Safety Board and rail companies in crash investigations. However, as Senator Gagné said in her remarks to this chamber, Bill C-49 goes further. It also gives railway companies access to randomly selected recordings that are not linked to any incident or accident. Her compromised amendment was declined. This places us in an incredibly difficult position. To complicate matters, Kathy Fox, head of the Transportation Safety Board, said about allowing railway companies the use of video and audio data:

> Canadian railways have often demonstrated a very rules-based, punitive culture, and although progress is being made to improve that culture, the TSB nonetheless understands employee concerns about how this data might be used or misused.

Senator Pratte made the point that of the main track derailments during an average year, 20 per cent are due to human error and about 70 per cent are track or equipment related. I think this is a very important statistic as technology now exists which would prevent many train accidents in real time as opposed to only providing post-accident evidence. Senator MacDonald mentioned positive train control technology, which uses transponders and GPS to slow a train down when it is speeding or when it violates a traffic signal. This technology has been mandated in the United States, and although there have been delays with the technology, I find it surprising that in Canada we are not moving in this same direction too. This technology can proactively save lives. It should be in this bill.

Protecting shippers was paramount and reflected in the amendments put forward. Protecting the rights of linguistic minorities too was paramount and reflected in the amendments put forward. As we have heard over the course of the past three days of debate in this chamber, there exists a deep frustration with the government's response to our efforts. We are, on the other hand, truly pleased with the amendments which were taken, especially those dealing with soybeans, western interswitching and the Canadian Transportation Agency.

Indeed, this last weekend I was told by the grain industry, on the addition of soybeans to the Maximum Revenue Entitlement, that at the time when the MRE was originally established, soybean production in Western Canada was extremely low and it was generally considered to be a specialty crop after that. Soybean production in Western Canada has steadily grown and now approaches 3 million metric tonnes per year. Excluding it from the MRE is unjustified and could ultimately serve as a deterrent to the expansion of this important crop into Western Canada.

That amendment was approved.

On the long haul interswitching, I was told that it was one of the only tools available to captive shippers to cause railways to compete against one another. In order for interswitching to be effective, the railway that a shipper accesses via interswitching must necessarily be a railway that is able to deliver railcars to their intended destination. Having access to a railway that can provide rail service to Vancouver is not effective if the shipper is looking for rail access to California. The proposed amendment addresses this issue by setting the interswitching point to the nearest point "that is in the reasonable direction of the shipper's traffic and its destination."

Currently, with number 3, the CTA can only take action if it receives a shipper's complaint. However, shippers are often reluctant to file and pursue complaints against railways because of the time and expense involved and the fear of retribution. The amendment allows the CTA to investigate railway performance without the need for a shipper complaint, which is similar to the powers afforded the U.S. Surface Transportation Board. Minister Garneau amended the Senate's amendment slightly by requiring the CTA to obtain the minister's approval prior to initiating such an investigation. According to my advisers from the grain community, they said we do not consider this amendment to be unreasonable.

They also emphasized it is important for these amendments in Bill C-49 to be passed expeditiously. They noted the busy fall shipping season will quickly be upon us, and shippers need to have access to the tools and remedies provided in this bill to avoid the performance failures that occurred in 2013-14 and again in 2017-18.

Colleagues, in all, three of the Senate's 18 well-considered amendments, which we, the Standing Senate Committee on Transport and Communications, put forth after hearing the concerns of witnesses, have been fully accepted. Three others have been modified. All of these amendments were put forth with due diligence and within the role the Senate plays in our parliamentary system. We tried to make the bill better, and we have.

I commend the efforts of those who made amendments. They included my concerns. I thank Senators Cormier, Gagné, Galvez, Griffin, Mercer, Plett and Boisvenu for crafting the amendments. I thank all my colleagues for their efforts in addressing the shortcomings of this bill. These amendments demonstrate the fact that Senate committees do their jobs and do their jobs very well.

Now we find ourselves in the position the Senate can often find itself in with regard to government legislation. We must consider whether our role to give careful sober thought to improving legislation before us has indeed been fulfilled.

I would like to share a quote from Sir John A. Macdonald, which I found in a piece by former Senator John Lynch-Staunton:

> There would be no use of our Upper House if it did not exercise, when it thought proper, the right of opposing or amending or postponing the legislation of the Lower House. It would be of no value whatever were it the mere chamber for registering the decrees of the Lower House. It must be an independent house, having a free action of its own, for it is only valuable as being a regulating body, calmly considering the legislation initiated by the popular branch and preventing hasty and ill-considered legislation which may come from that body, but it will never set itself in opposition against the deliberate and understood wishes of the people.

We must respect those wishes. They have spoken. We have carried out our duties on their behalf. We will continue to monitor the results and expect some of these very issues to continue to surface. I will support this bill.

Some Hon. Senators: Hear, hear.

Hon. Percy E. Downe: Will the honourable senator take a question?

The Hon. the Speaker *pro tempore*: Senator Bovey, will you accept a question?

Senator Bovey: Indeed.

Senator Downe: I fully respect your position that you are deferring to the House of Commons, but I have been intrigued over the last couple of weeks that there have been hand-wringing and nervous concerns about the role of the Senate, what we should be doing and how we should be doing it. There have been references to the House of Lords and the British system, which we are based upon, but the House of Lords, of course, never defeats legislation the government campaigned on.

• (1450)

However, I'm wondering if you're aware that, yesterday, the House of Lords defeated a Brexit amendment on which the government not only ran an election but on which it had a separate referendum. They defeated it by a vote of 335 to 244. It is all over the British media as a major defeat for Prime Minister May. She promised the house a meaningful vote, and the Lords insisted it would be a binding vote. They passed an amendment to that end.

Given we are based upon the House of Lords and given the reference to the British system I have heard over the last few weeks, would that be consideration in changing positions in this chamber, in your opinion, or should we always defer to the House of Commons?

Senator Bovey: Thank you for the question. I have to confess I had other personal issues on my plate last night, and I missed the news.

That said, we have a record where we have changed legislation, and effectively, from the other place. At times, it's absolutely appropriate. However, you have to appreciate from my perspective representing the Province of Manitoba, and given the crisis of the grain farmers, that as I weighed the amendments that had been accepted and the amendments that were not accepted, I feel very strongly we have to get the grain moving. It is a crisis in the West. With planting season upon us, it's time to get grain from the Prairies moving.

[*Translation*]

Hon. Pierre-Hugues Boisvenu: Before I begin, I would like to salute the members of the Senate Standing Committee on Transport, who did remarkable work. I would like to express my appreciation for their work.

Today I want to talk to you about the message from the House of Commons rejecting the three amendments relating to joint ventures and the amendment to make life easier for Canadians with a loved one who dies abroad.

This bill means major changes for joint venture applications. Until now, the Commissioner of Competition could approve or reject joint venture proposals, but under this bill, the commissioner would now lose that key role and be reduced to a

bit player in the joint venture application process for airlines. The minister, behind the closed doors of his private office, isolated and removed from the expertise of the Commissioner of Competition, would decide whether to approve or reject joint venture applications. That is why I encourage you all to familiarize yourselves with the Standing Committee on Transport and Communications' amendments, which are designed to maintain competition and Canadians' right to buy reasonably priced plane tickets and benefit from competitive pressures that drive prices down.

The first amendment that I, on behalf of consumers, am asking you to keep is related to the public interest. Bill C-49 mentions public interest but does not describe the criteria that define it. This amendment would clarify the concept of public interest in Bill C-49. We established our list of factors that define the public interest based on those the U.S. Department of Transportation uses when examining requests for antitrust immunity. Some provisions of the bill are based on the American process.

In addition, Transport Canada published draft guidelines for mergers and acquisitions involving transportation undertakings in 2008, which is 10 years ago now. However, those guidelines were never finalized. Our criteria are based on some of the criteria set out in the 2008 draft mergers guidelines. In our opinion, these factors must be set out in the act, rather than in the guidelines, since the legal weight of the guidelines is unclear and the guidelines could be changed at any time. This amendment would clearly set out some of the criteria that the minister must take into consideration when determining whether the public interest warrants the approval of joint ventures and agreements. The minister must consider what impact the agreement would have on competition, airlines, airline service, flight safety, the environment and passengers.

I would like to quote the former competition commissioner, Mr. von Finckenstein, who is extremely knowledgeable about this issue. He said:

[*English*]

> The law, as it is right now, does not even specify on what basis or what criteria [the minister] will use to judge public interest. Nor does it provide that he distinguishes why he did certain things for the public interest as opposed to competition, and it doesn't provide for review.

[*Translation*]

The second amendment deals with the consultation that must occur before the minister gives a joint venture the green light. The purpose of this amendment is to create a more transparent process requiring that the public be consulted before the minister can decide whether to approve or reject a joint venture.

Another objective of this amendment is to provide for the opportunity to consult all parties involved, including customers, passengers, and industry stakeholders, and get their opinions. If consultations are not held, the minister could make a decision that would limit competition without seeking the opinions of consumers or other airlines.

The 2008 Guidelines for Mergers and Acquisitions involving Transportation Undertakings, which never came into force, provided for a consultation process. The guidelines read as follows:

> The Minister may seek the views of stakeholders (shippers, passengers, customers, suppliers, other levels of government, the general public . . . .

Under the amendment that the Senate has adopted, the minister will now be required to hold consultations. The amendment would give the public 20 days to present observations on joint venture proposals. The minister would then make a decision based on the public interest at the end of the consultation.

The third amendment proposes mandatory reviews of joint ventures. Under this amendment, the Minister of Transport would be required to review every joint venture arrangement two years after it comes into effect. According to the current wording, the department can conduct a review, but it doesn't have to. This amendment also adds a new subclause. We use the word "review" rather than "may review." The minister would have to review every joint venture arrangement two years after it comes into effect and every two years after that if it raises considerations with respect to the public interest, in order to ensure that the public interest is being met.

As the former competition commissioner said, the process proposed in Bill C-49 lacks transparency. To quote the commissioner:

[*English*]

> I have no problem with the minister or the Governor-in-Council saying public interest is paramount and overriding competition. Fine, but do it publicly, explain why you're doing it, revisit it after a certain time to make sure you got it right and didn't get unintended consequences, and specify what you mean by public interest.

[*Translation*]

Lastly, I think it's also vital to support my fourth amendment, which is about bringing a body or ashes back to Canada by air. Repatriating remains can be a difficult and complex ordeal for family members, especially if they're not familiar with the procedures to be followed. This amendment would make it easier to access the basic terms and conditions for arranging for a body or ashes to be flown back to Canada. It doesn't make it mandatory to provide this service, but it states that if someone contacts a company that offers this service, the company has to provide the terms and conditions in language that is simple, clear and concise.

I therefore invite you to reflect on this very difficult situation and to spare a thought for anyone who has ever lost a loved one while travelling. These people are entitled to have timely access to the information they need to repatriate their loved one's remains. I think the government showed a lack of sensitivity and openness on this issue, as well as a lack of consideration for consumers and their bereaved families. Thank you.

• (1500)

[*English*]

Hon. David Tkachuk: Honourable senators, as chair of the committee that studied Bill C-49, I am well aware of the depth of feeling by various stakeholders about the amendments the Senate proposed to this bill. We were told more than once by the minister how painstakingly he and his bureaucrats worked to create what he called an "exquisitely balanced" piece of legislation. The committee heard from 76 witnesses. Of these 76, I can only think of three of them that would probably agree with the minister that the bill is "exquisitely balanced." Everyone here knows who they are.

Nearly every other witness that came before us said it could be improved. Nearly all of them suggested amendments to improve it. We spent 23 hours in committee studying this bill and listening to these witnesses, and in our twelfth meeting on the bill, when we went through it clause by clause, senators of every stripe proposed amendments. Eighteen amendments were passed when we reported the bill to the chamber and then sent it over to the house.

As I said previously to a reporter, these amendments are not ours. They were argued forcefully by Canadians involved in the transportation industry, both shippers and consumers, and we were convinced by their arguments.

This is a lot of amendment for a bill that arrived at the Transport Committee accompanied by a great deal of pressure from the minister to get it done quickly. The Senate was accused by the minister of delaying the bill. "The grain farmers need this bill," he said. "Winter is coming and we don't want a repeat of 2013." Never mind that by not renewing the interswitching provisions of Bill C-30, he had manufactured the very crisis he was now urging the Senate to hurry along and fix.

Being from Saskatchewan, I was well aware of the grain farmers' concern, so I took particular umbrage at the minister's suggestion that we would do anything to delay the bill and prevent the shipment of grain. It was clear from the number of stakeholders we heard from, even before the bill reached our committee, that something was amiss. All was not as it seemed, and the government seemed happy to leave the impression that this was simply a grain transportation bill.

The number of amendments proposed at clause-by-clause consideration by representatives of all sides in the Senate and the near-unanimous support for most of these amendments was impressive, to say the least.

So, honourable senators, I'm left with this unfortunate thought: The Minister of Transport and the government itself sent this bill to the Senate with a nothing-to-see-here attitude, when they knew full well there was plenty to see. They orchestrated a crisis in grain transportation when they refused to renew the interswitching provisions of Bill C-30 until C-49 was given Royal Assent, and then they used that crisis to try to rush that bill through the Senate.

Honourable senators, which is the one sector that Senator Harder quoted in favour of this motion of concurrence? The grain sector, specifically the Agricultural Producers Association of Saskatchewan, who, he said, issued the following statement last week:

> With C-49, we believe that the minister, MPs and senators have all paid attention and worked hard to address long-standing problems in grain transportation.
>
> We look forward to quick passage of this legislation —

— and pay attention to these last words —

> — to ensure that we can plan for moving the crop that we are seeding this spring.

We learned in committee that there was much more work to be done. This was not — and is not — simply a bill about grain transportation. It is a bill about airline passengers and their rights. It's about railway workers and privacy and safety. It's about airlines themselves and their business models. It's about shippers and our resource industry, who consider this a once-in-a-decade opportunity to level the playing field with the railroads that they depend on to get their product to market.

Honourable senators, the shippers couldn't have made it any clearer in committee how important it was for them to get the amendments they proposed. With the rejection of the amendments, they continue to be at the mercy of the railroads.

The minister rejected the amendments that would have given shippers a level playing field. At least the grain industry got something. The government continues its war on the resource industry in Canada. They cancelled Energy East; they refuse, so far, to intercede in the Kinder Morgan expansion dispute to get the pipeline built; they cancelled Northern Gateway; and now they have refused to break the railway monopoly, as a Maritime newspaper so aptly put it.

The greatest impediment to getting our goods to market in this country is the lack of competition in the railroad industry. That fact was not raised once by the minister, despite the railway's inability to move western grain, oilseed and pulse products to port. They blamed it on the weather when they have only themselves to blame, and their selfish need to cut costs and a failure to prepare for a fall harvest in 2017.

We've been growing grain in Saskatchewan, Alberta and Manitoba and in the West for over 100 years. You think they would have figured out that when fall comes, there would be grain to move. You think they would have figured it out.

Their glowing reputation in the minister's eyes is contrary to what we heard from witnesses from the shipping and resource industries, one of whom refused to sit at the same table with the railroad representatives.

The government allowed a crisis to fester that it could have easily avoided or fixed, so it put pressure on the Senate and encouraged or — at the very least — didn't counter impressions it left in the media that the Senate was delaying the bill. I find that disgraceful.

I want to thank all our groups involved who suggested amendments and observations. For our part, the Ministers of Transportation and Agriculture in Saskatchewan weighed in with letters to the minister and the PMO; the Premier of Saskatchewan weighed in, and I want to thank them as well.

As for the Minister of Transport, in negotiating with the shippers and resource people over the amendments we proposed, he bullied them into continuing to accept an unlevel playing field with the railways. When it came to final offer arbitration, he said, "Take it or leave it." They stood their ground, and what did they get? The motion tabled by the minister not only rejected the Senate's Final Offer Arbitration Costing Determination amendment, but further enhanced railway market power over captive shippers during final offer arbitration. He did that by declaring that final offer arbitration is not a cost-based remedy but a commercial-based remedy.

As Senator Plett pointed out yesterday, the minister also rejected Senator Griffin's amendment, which was a modest solution exempting shipments for New Brunswick and Nova Scotia from the Quebec-Windsor Corridor long-haul interswitching inclusion zone. Senator Plett explained it well:

> This would eliminate inadvertent regional disparity, and it mirrors the existing exception for shipments originating from northern Quebec. This amendment would provide shippers destined for Saint John or Halifax with competitive rail options, making these ports more attractive.

The minister's explanation that alternative modes of transport are available is laughable.

They've had this since 2014 and I haven't noticed any cancellation of railways in northern New Brunswick.

Before I move to my motion, I'm going to quote from *The Wise Owls*, a very popular and famous publication you all know well, and it goes like this:

> When the Forest-dwellers decide to elect a Council of Animals to run their affairs, not everything goes to plan. They quickly learn that what's good for one animal is not necessarily good for all of them — but how can they resolve their differences? Enter the Wise Owls, who agree to form a Senate to make sure every animal's voice is heard.

Some Hon. Senators: Hear, hear.

Senator Tkachuk: We have a self-declared responsibility to make sure that the voices of our shippers, resource people and Maritimers are heard.

MOTION IN AMENDMENT

Hon. David Tkachuk: Therefore, honourable senators, in amendment, I move:

> That the motion be not now adopted, but that it be amended:
>
> 1. by deleting, in the second paragraph, the reference to amendments "7(c)" and "8", and the word "and" at the end of that paragraph in the English version;
>
> 2. by adding, after the second paragraph, the following:
>
> "That the Senate insist on its amendments 7(c) and 8, to which the House of Commons has disagreed;"; and
>
> 3. by replacing the third paragraph with the following:
>
> "That, pursuant to rule 16-3, the Standing Senate Committee on Transport and Communications be charged with drawing up the reasons for the Senate's insistence on its amendments and present its report, with the reasons for the insistence, on or before the later of May 10, 2018, and the second day the Senate sits after the adoption of this order; and
>
> That, once the reasons for the insistence have been agreed to by the Senate, a message be sent to the House of Commons to acquaint that house accordingly.".

Some Hon. Senators: Hear, hear.

• (1510)

The Hon. the Speaker *pro tempore*: In amendment, it was moved by the Honourable Senator Tkachuk, seconded by the Honourable Senator Raine:

> That the motion be not now adopted, but that it be amended:
>
> 1. by deleting, in the second paragraph, the reference to amendments "7(c)" and "8", and the word "and" at the end of that paragraph in the English version;
>
> 2. by adding, after the second paragraph, the following:
>
> "That the Senate insist on its amendments —

Shall I dispense?

Hon. Senators: Dispense.

Senator Mercer: No.

Hon. Grant Mitchell: I have a question for Senator Tkachuk, please.

The Hon. the Speaker *pro tempore*: Would you accept a question, Senator Tkachuk?

Senator Tkachuk: Sure.

The Hon. the Speaker *pro tempore*: I apologize. Senator Mercer insists that I read the motion in amendment:

Therefore, honourable senators, in amendment, I move:

That the motion be not now adopted, but that it be amended:

1. by deleting, in the second paragraph, the reference to amendments "7(c)" and "8", and the word "and" at the end of that paragraph in the English version;

2. by adding, after the second paragraph, the following:

"That the Senate insist on its amendments 7(c) and 8, to which the House of Commons has disagreed;"; and

3. by replacing the third paragraph with the following:

"That, pursuant to rule 16-3, the Standing Senate Committee on Transport and Communications be charged with drawing up the reasons for the Senate's insistence on its amendments and present its report, with the reasons for the insistence, on or before the later of May 10, 2018, and the second day the Senate sits after the adoption of this order; and

That, once the reasons for the insistence have been agreed to by the Senate, a message be sent to the House of Commons to acquaint that house accordingly.".

Now we'll go to Senator Mitchell's question. Senator Tkachuk, will you accept a question?

Senator Tkachuk: Yes.

Senator Mitchell: I notice that people are wondering exactly what the effect of this is. Could you just go through it and explain what each of these things will do? I know you talked about final offer arbitration, FOA, and you talked about LHI to the Maritimes. Could you give us a rundown of how that's reflected in here so that we can debate it?

Senator Tkachuk: The second amendment is on interswitching. It goes back to the original amendment we passed here and the policy that's been in place since 2014, which the government eliminated by rejecting our amendment.

Final offer arbitration has to do with costing and commercial transactions, which is what the shippers wanted. The government, instead of keeping it the way it was, rejected it and added the word "commercial" to it, which then makes it very difficult for the transport commission, which is normally charged with the costing. We're going to get into a lot of legal technicalities here, but when you say the word "commercial," they don't have to do the costing they're compelled to do under final offer arbitration. Instead, the word "commercial" means there is competition, and really, the railroads have no competition. Changing it basically removes final offer arbitration from the table; it basically doesn't exist.

All this does is go back to the original amendment. I haven't changed it.

Hon. Diane F. Griffin: I have a question I would like to ask right away and not let things get out of hand. Sorry for waving. I know we're not allowed to use props.

The Hon. the Speaker *pro tempore*: It was the only way I could see you because you were blocked from my vision.

Senator Griffin: Yes, we're both short. They will have to move our seats, unfortunately.

My question is for Senator Tkachuk. I wasn't aware there was a third part to his amendment, and I'm wondering how firmly wed he is to that amendment. It strikes me that while he gives May 10 as the time for the report to be presented, it would be my hope that any amendment that might come here today could be sent to the House of Commons today.

I see this has been problematic, so that's my question to you. Do you perceive this as being problematic, as I do?

Senator Tkachuk: I don't see it as problematic. I asked the same question. The problem is that under Senate rule 16-3, it has to go back to committee. I thought if it passed here, we would do that immediately, if we got the permission of the house. We could get it done and bring it back. That's what the rule states, so that's why that section is in there.

Hon. Michael Duffy: Colleagues, I rise today to remind us that we as senators have a responsibility to represent our regions. I heard in Senator Tkachuk's speech strong representation on behalf of the grain farmers of Western Canada. As one who has been around here for quite a while, I remember the debates over the Crow Rate and the abolition of the Wheat Board. These issues go to the core of people in Western Canada. They feel very strongly about it. They have very strong feelings about the railway.

While I am sympathetic to that, we cannot forget that there are other regions in Canada that also have concerns about transport and about the industries in those areas becoming and remaining viable and competitive.

For as long as I can remember, Atlantic Canada has been fighting for equal treatment. As a child growing up, I remember Ottawa building the St. Lawrence Seaway and I remember hearing the neighbours complain about the millions being spent on icebreaking on the St. Lawrence River, which allowed shipping to carry on to Montreal almost year-round. It dramatically cut winter shipping through our ice-free ports in the Maritimes, including Sydney, Halifax and Saint John, while boosting traffic to Montreal.

Earlier today, we heard from Senator Downe, who made one of his usually perceptive interventions, but his topic most recently has been the bridge and the tolls on the bridge between Prince Edward Island and New Brunswick. When that bridge was built, it was about $1 billion, and it was paid for through the system of tolls that was put in place. Now, there's a second billion-dollar bridge linking Montreal to the south shore of the St. Lawrence River. Will those motorists pay tolls? No.

It's just another example of the many ways in which Maritimers feel they are being put at a disadvantage. I won't even touch the Energy East Pipeline.

An Hon. Senator: Go ahead.

Senator Duffy: As we have heard, the amendment being proposed to long-haul interswitching in the Canada Transportation Act would put Atlantic Canada on the same footing as shippers in Ontario, Quebec and northern British Columbia. As Senator Griffin suggested today in her question, the issue is one of equality for our region.

The technicians in Transport Canada and the lobbyists and the advocates can talk about the details, but the big picture for our people in Eastern Canada is that we don't want to be left out. We don't get to amend the Canada Transportation Act every second year or so. It takes a decade to get this subject on the national agenda. We don't want to be left behind once again.

The railways want to keep the status quo, and we've heard every kind of epithet hurled at the railways over the years on all of these questions related to freight rates and the transportation of grain. But competition is good. Think about the phone service for a minute. I remember the days when we had one telephone service. It was a monopoly, and everyone used to sit with a stopwatch to time their three-minute phone calls. We were told then by the monopoly that any change would be bad for customers. "We will go out of business. Service will deteriorate." The litany of complaints went on and on.

Eventually, the Supreme Court intervened and told them they had to open up their network. What do we have today? Competition in the telephone market has led to lower costs and better service for consumers, and no one wants to go back to the telephone monopoly.

In Atlantic Canada, there are strong feelings about our place in Confederation. It is more tender than most people realize, and that worries me, because we are one nation. We have a great spirit in this country. Atlantic Canada wants to be part of that economic growth as we go forward in a positive way.

• (1520)

This isn't about negativity. It's about inclusion. I would encourage all of our colleagues to think about inclusion as we consider these amendments today.

I am a little concerned and disappointed that the two amendments are looped in together. I don't believe that the government, through the regulatory process, should be involved in setting freight rates any more than they're involved in running the corner supermarket. The idea of interfering further in business does not appeal to me. However, the idea of long-haul interswitching and making our region part of the network and competitive with everyone else I can support.

These are issues I think we should consider as we look at the legislation before us today. Thank you, honourable colleagues.

Hon. Donald Neil Plett: I have a question for Senator Duffy.

The Hon. the Speaker *pro tempore*: Senator Duffy, would you accept a question?

Senator Duffy: I would be delighted.

Senator Plett: Senator Duffy, thank you very much for your speech. I fully support that and agree that this does not need to take any time at all for those of us who are concerned about farmers losing a crop year. Clearly, the amendment is quite specific.

You have a concern that there are two issues in this amendment. I will pose this in the form of a question, although I don't want to suggest that you don't know what you're talking about.

The question is this: You realize, of course, that the other place could separate this amendment once it's over there and accept part of it and not the other part?

Senator Duffy: Thank you, colleague. It wouldn't be the first time you said to me that I didn't know what I was talking about.

Yes, I know that can be done, and this is an indirect way of suggesting that it might be more palatable, certainly to me, if it was done over there. I think we should be dealing with broad principles here, and if there are technicalities, I'm sure Senator Tkachuk has the technical expertise to do what needs to be done.

Hon. Pierrette Ringuette: Honourable senators, first of all, on the general bill, I'm not necessarily a happy camper because of the issue of privacy and the video cameras in the locomotive. I'm still not convinced how the airline passenger bill of rights will unfold.

That being said, the beauty of this institution is that our term does not end until we're 75, and our term doesn't end when a government is changed in the other place. Therefore, because of my concern on these two issues, I will be continually following up on what is happening and I hope that I will not be the only one in this chamber to do so.

I'm a little surprised with the amendment in front of us, because for the 15 years I've been in this chamber, Senator Tkachuk has been the champion of the free market. He has been the champion of reduced regulation. The amendment in front of us increases government regulation and reduces the free market scenario. So I'm surprised about such an amendment coming from Senator Tkachuk.

Now, as a Maritimer and as an Atlantic Canadian, historically, we lost the rails in Newfoundland because we didn't have enough traffic. We lost the rail in P.E.I. because we didn't have enough traffic. These railroads were lost during the Mulroney years. These railroads were replaced with a maritime transportation subsidy program. You will remember that.

In 1995, in the other place, a study was conducted with regard to maintaining CN that we had in Atlantic Canada. They looked at Nova Scotia, the northern line in New Brunswick and the central and northwest line to New Brunswick from Montreal. The situation was so poor with regard to profit generating on these lines that CN was seriously considering removing themselves from these routes. The measures that we had to take in order to secure a competitive place and to secure options for shippers in our area was to remove the Atlantic transportation subsidy program , because the subsidy program was destined for 18-wheelers only.

So we are here today. I want to make sure that in New Brunswick, we still have a northern railway to supply the people of northern New Brunswick. The Port of Belledune is very important to us, and also the central and northwest line that provides shipments going back and forth between Montreal and Halifax.

I am also very proud to say that in the Saint John River Valley corridor, we have the highest truck industry per capita in this nation, and that is because of competition. They are providing good jobs. They are providing a stable transportation mode, and all that time by being competitive with CN.

Honourable senators, I understand that some may be tempted to think that in order to amend the motion before us, we need to invoke and get the support of the Atlantic Canadians. I say to my Atlantic Canadian colleagues: Beware. We should know about the history of the transportation system in our neck of the woods and any measure that might be detrimental to its future. And God almighty, maybe it is time that Atlantic Canadians get together — never mind political affiliation — and talk about Atlantic Canada, talk about how we can help to foster the growth at the Halifax Port, the Belledune Port, the Saint John Port.

I'm sorry, but I have priorities in regard to my region other than this proposed amendment. Thank you very much.

Senator Griffin: Honourable senators, I rise today in support of the Senate insisting on the amendment 7(c), which would give captive shippers in the Maritime Provinces access to long-haul interswitching and would provide a remedy to CN having a monopoly of Class 1 rail lines in the Maritimes. I am asking for your support so that the Maritimes will be treated as an equal partner of Confederation.

• (1530)

As an environmentalist, I might point out to you, for those who do not already know, that rail lines are much more environmentally friendly, and in this age of trying to reduce greenhouse gas emissions, I would suggest that encouraging more trucking in the Maritimes has not been a good policy in our country.

Colleagues, the principle rationale for government to not accept this amendment is that it is concerned about CN's economic profitability. That's what I'm hearing — its profit, especially on its secondary rail track, the Newcastle Subdivision in northern New Brunswick. The concern that I'm hearing is that if long-haul interswitching is implemented, CN will abandon this track. There is a great sense of irony in this statement because, honourable senators, 150 years ago the Newcastle Subdivision was part of the deal that created Canada. Its importance cannot be understated as it is section 145 of the Constitution Act, 1867. The Grand Trunk Railway opened in 1872, through the determination of strong federal leadership, to support rail in the Maritimes.

Honourable senators, I call upon the federal government to show the same leadership to ensure that rail continues to operate 150 years later. Concerns regarding track abandonment and the implementation of long-haul interswitching are not mutually exclusive. Moreover, the increased rail congestion in Montreal did not prevent the government from providing long-haul interswitching to northern Quebec. The government should work with CN to help create an interswitch point in an area that eases this congestion, or provide other economic means to address CN's concerns. If you are in my committees, you know that I often ask this: Government has two instruments at its disposal — economic and financial. There are the two proposals that can be used once again.

At the end of the day, the government views the CN line in the Maritimes as a critical transportation link; therefore, it should take actions to ensure that interests of a specific company do not outweigh regional concerns.

Often in this chamber we hear about the importance of sober second thought in the context of deference to the House of Commons as they are the elected chamber. However, for the Maritime Fathers of Confederation, regional representation and voting in a manner that is consistent with this principle was equal to sober second thought.

On this point, I would like to quote Senator Harder in his recent policy paper. The Senate is:

> . . . a voice for smaller regions and minority interests so that they are not drowned out by the larger and louder voices. This is why membership in the Senate is by region and why the guarantee of equal regional representation is enshrined in our Constitution. Not all Canadians are aware that the notion of regional equity was necessary to strike Canada's Confederation bargain. Without it, there would be no Canada.

He's a very good writer, by the way.

Senators, I ask you to contemplate this point: Yes, we are not elected; however, we still have a legitimate role to play in the consideration and insistence of policy. This is not an issue of a federal election campaign platform; therefore, the disputed Salisbury Convention does not apply here. The government itself amended Bill C-49 in the other place to address concerns of captive shippers in northern British Columbia and northern Quebec. The present issue is simply to ensure that when the government makes a policy decision, it does so in a manner that is respectful to all regions. All regions must have the opportunity for success. Why do shippers, ports and ultimately Maritimers have to pay more to send or receive goods by rail in the Maritimes than in the rest of Canada?

By the way, speaking of ports, the port authorities in Halifax, Saint John and Belledune were not consulted until staff from my office and Senator Cormier's office contacted them. Other regions either have competition or long-haul interchange to ensure that a fair rate is paid. Our role as Maritime senators is to look out for the interests of our provinces to ensure that national actions do not place the Maritimes at a disadvantage.

This is fundamentally a question of respect. Why is the Maritime region the only region where the economic interests of a private company outweigh the concerns of provincial governments and stakeholders? Maritime companies are concerned about the monopolistic practices of CN, but they will not have the same policy tools as other areas in Canada where rail monopolies exist. Honourable senators, this is not fair, nor is it respectful. The Maritimes are not a junior partner of Confederation. Rather, we are an integral partner in Confederation.

We must vote yes on this motion to send this bill back to the other place to show the government that they must treat the Maritimes with respect. The more populous and vote-rich provinces of Quebec and British Columbia would never tolerate their captive shippers not having competitive options. That is why the government made these amendments when it was discovered these regions would be negatively impacted. Why is it acceptable for the Maritimes not to be given the same respect?

Senators, we sent 18 amendments to the House of Commons. All this motion will do is send two amendments back to the members of Parliament to highlight these issues with a laser-like focus. When our amendments were debated in the Commons, there was no debate in that chamber on long-haul interswitching in the Maritimes beyond the minister's brief comments. Let the other place have a specific debate on the unequal treatment of the Maritimes as well as the final offer arbitration. If, after this debate, the Commons chooses to reject one or both of these amendments, at that point I agree we should yield.

Senators, the Western prairie grain farmers asked that the bill be passed before July. They are planting their crops now, as Senator Tkachuk noted. We will still meet that target. They have to have the grain bins cleaned before the new crop comes in in the autumn, so we must not act in haste and forget the concerns of one part of the country. I have to concede that Ontario is east. In the eastern-most regions, we can't forget the concerns of the stakeholders, and I ask that you join me in this endeavour. Thank you.

Some Hon. Senators: Hear, hear.

The Hon. the Speaker: A question, Senator Downe?

Hon. Percy E. Downe: Thank you for your vigorous defence of Atlantic Canada. As you indicated earlier, there is no self-interest because Prince Edward Island doesn't have any railways. It's important to highlight why we don't have any railways. The reason for that is a classic example of de-marketing. CN decided that they were simply not going to invest in the rail system in Prince Edward Island for a number of years, which led to a deterioration in the tracks, which led to a corresponding deterioration in the service. At which point, most of the agricultural, fisheries and other industries switched to trucks, at which point CN said, "Oh, there is no traffic anymore; we want to abandon it."

• (1540)

Given the record of CN in the region, this unfortunately is not unique to Prince Edward Island, but it led to a further erosion of Atlantic priorities and concern for the national agenda. Senator Duffy and you, Senator Griffin, in the past have talked about the Confederation Bridge, which is the most recent example of a two-tier policy in this country.

I don't want to give a speech, so I had better ask the question. I may join the debate because if I start with the Confederation Bridge, I will not stop.

Senator Griffin, you have indicated that this should go back to the House of Commons, in your view. What reconsideration do you hope will take place in the house, particularly among the Atlantic MPs?

Senator Griffin: I must admit our Atlantic MPs have been rather quiet. We are not seeing much from them in the media. It's all very fine to talk to them in person.

You are absolutely right about what happened with the railway on Prince Edward Island: the service got worse, people stopped using it as much, the service got worse again, and it was just a vortex down into the bottomless hole of no railway at the end of the day.

It is great to have the Confederation Bridge, but yes, I think I have to pay $47 every time I cross it. It's free to go to Prince Edward Island, by the way, but you pay the $47 to leave Prince Edward Island.

At the end of the day I think what I'm asking for here is consideration and respect.

You have given a very good example, Senator Downe, of a couple of things that happened in the past, especially regarding transportation. Like the prairie farmers, our Island farmers need good transportation services. I would like to see it done in a more environmentally friendly manner rather than using fleet upon fleet of trucks, and I would like to see it done for a fair price.

There is no reason why, just because we are the little one at the end of country, we should be treated like the little kid in the playground and bullied.

Senator Downe: You are quite correct. The Confederation Bridge, at $47, is an outrageous fee given that the bridge was a condition of Prince Edward Island joining Confederation: that we have continuous communication, which has been recognized by the courts, from the ice boats to the ferries to the new technology of being able to construct a bridge at a little over $1 billion.

Then we find out on the eve of the federal election that the leader of the then-third party announced there would be no tolls on the New Champlain Bridge in Montreal, which cost up to $5 billion. He simply matched the policy of the then-NDP Leader Mulcair, but we are stuck now with a situation where Canadian taxpayers are funding two bridges, one that people pay $47 for and the other on which there are no tolls.

Is Senator Griffin aware of the subsidies that CN pays currently for VIA Rail passengers, per ticket, in Central Canada?

Senator Griffin: I was not aware of that. That is very interesting. I know as parliamentarians we get a free ticket. That's all I knew about it. So no, I was not aware of the subsidization of passengers in Central Canada.

Hon. Carolyn Stewart Olsen: Senator Griffin, would you take a question?

Senator Griffin: Yes.

Senator Stewart Olsen: I'm very interested in whether you have seen the state of our roads in New Brunswick and, I dare say, through the entire Maritimes. They are appalling. We have to rebuild them every single year to the tune of millions and billions of dollars. A rail system will not cost us any more than that and it's so important to provide good transportation.

And I hear you, Senator Ringuette, about truckers and competition, but we simply can't keep the roads serviced to provide that right of way for them. We need the balance of a rail system.

The Hon. the Speaker: Senator Griffin, your time has expired. Are you asking for time to answer the question?

Senator Griffin: Yes, please.

The Hon. the Speaker: Is leave granted, honourable senators?

Hon. Senators: Agreed.

Senator Griffin: Yes, I have seen the roads in New Brunswick. Have you seen the roads in Prince Edward Island? Because we have the soft Island sandstone. It's a beautiful red, but very soft, and the highways have taken a pounding with the constant truck traffic that's on them.

When the railway was abandoned, I was working with the Island Nature Trust, a conservation group on Prince Edward Island. I pointed out at that time that the roads were going to take a beating and we were going to be left with a more environmentally friendly way of doing things. And what can I say now, except I told you so.

Hon. Michael L. MacDonald: I had not intended to speak today, but I thought since this is subject matter I have always been interested in, I would like to put in my few cents' worth.

Senator Ringuette mentioned the closure of railways on Prince Edward Island and in Newfoundland back in the 1990s, and Senator Downe already spoke elegantly and reasonably as to what occurred in Prince Edward Island.

Newfoundland, of course, was an even more unusual situation. It was a narrow-gauge railway, so it was extremely inefficient to operate. Of course, Newfoundland and Prince Edward Island are both islands. Newfoundland is a huge island and the economics of that particular railroad became untenable, particularly with the completion of the Trans-Canada Highway.

But Nova Scotia is not an island, and since the completion of the Canso Causeway in 1955, a couple of weeks after I was born, the entire province has been connected to the rest of the country. Even before that, the railroad ran well into Cape Breton, even when it was served by the ferry.

Industrial Cape Breton used to be the industrial heartland of Cape Breton, by far: 22,000 miners, 20,000 steel workers and huge infrastructure. We were full participants in the economic life of the country.

Now, Senator Duffy mentioned — and it's worth mentioning — the creation of the St. Lawrence Seaway, which I think was a great engineering project and a great nation-building project. It was opened by the Queen and Mr. Eisenhower and John Diefenbaker in, I believe, 1959, and it was a very expensive project as well. In general, it served the entire country well. It created wealth and allowed the West to get its products east. It developed the lakehead and Toronto, and it was great for the City of Montreal.

But there is no question that it marginalized the transportation advantages of Atlantic Canada. However, sometimes when you are building a country, you have to add the pluses and minuses and see which ones carry the most weight, and in the long run it was good for the country.

What has happened in Atlantic Canada — particularly in Nova Scotia, and the New Brunswick complaints are legitimate as well — is that New Brunswick has a lot more rail than Nova Scotia does. We have almost none anymore.

As Senator Ringuette mentioned, we know the trucking industry because all the trains come to Moncton, and they put them on the truck and drive them to Newfoundland and pound the hell out of Nova Scotia's highways. No jobs, no value added, and the railroad running from Truro to North Sydney is empty because CN abandoned it, just like Via Rail abandoned it. It abandoned two thirds of my province and marginalized us economically.

Now, with this particular motion, Senator Harder mentioned that we have the advantage of those ports. This is not about having the ports in Saint John or Halifax or the Strait of Canso or Sydney; this is about the ability of Western farmers to get their grain to port. The last time I looked, you can't sail out of Regina. It has to go by rail.

It was the potash producers who brought this to our attention. These producers want to take their product east. Right now, they can only take it west reasonably inexpensively, but if they want to go east with it, they should have a flat rate. But once they get to Montreal, CN can charge anything it wants, and they are stuck with paying the fee. And this is wrong. We are being marginalized.

The government should have accepted this initial amendment. That's why we, as Canadians who believe in equal treatment around this country, should cut a little break here and tell CN — which is a great company. I want it to be great. It is one the great railway companies of the world and one the greatest companies on this continent. But they are a very profitable company, and, when they cut out all the rail service, they made sure they had a little hook of service into Halifax so that they could fill their coffers. But they are doing nothing for the province. This is unacceptable to me, as a Nova Scotian, and I would hope that, as Canadians, it is unacceptable to you.

• (1550)

This is a very simple amendment. The minister can do it. CN can afford to pay for it. We can serve Western farmers, Western potash producers, and maybe we can get some of our oil East, too, and help this country. I support this amendment, and I would encourage all honourable senators to support it as well.

Hon. Elaine McCoy: I came in today expecting to hold to a time-honoured tradition that we defer to the other place after we have shared with them the wisdom of amending their proposed legislation once and once only. But then I learned through the debate this afternoon that, in fact, we are moving beyond normal times and into a position in which regions are being discriminated against.

Let me start, though, by saying that I commend the current government as being very open to amendments from the Senate. They are, amongst governments over the years, if one looks at the historical record, one of the most amenable to taking suggestions from this chamber, and I applaud them for their openness in that regard.

Let me also say I do believe that, when all is said and done, we should defer to the will of the people. Of course, that is the tiebreaker that Canada devised in the event that there would be some kind of deadlock between the lower and the upper chambers. In fact, in my opinion, it's not the last election that counts; it's the next election that counts. So if we send an amendment forward to the House of Commons and they don't accept it, then we say, "Be it on your head, and let the people decide, next election, whether they agree with the Senate or they agree with you." So it's not because people are voting on it today in the House of Commons and have been elected. It's whether they are going to be there after the next election that counts.

Having said all of that, I also believe that we should only insist on our own amendments in grave circumstances and on principle. Having put them forward once, we should defer, and we would only insist a second or even a third time — A senator who came from the province of Manitoba — he was a premier there for many years — Duff Roblin, said never should we send a bill back three times insisting on our own amendments. There are some who actually have a cap on the arbitrary number.

I will say there does come a time when we should defer, but if it's something important and on principle, not just because we prefer a policy, then, on principle, we should say, "By the way, did you consider this?" From what I'm hearing, particularly in this debate with regard to long-haul interswitching, I'm not sure they heard about that particular item. I hear that there was no debate in the House of Commons at least. The minister addressed it briefly, but certainly it doesn't seem as if the MPs addressed it. It's a matter of principle because that solution has been offered to other regions and is not being offered to the Maritime region. So, given our responsibility, as was stated before me today on more than one occasion, that one of our principal roles is to say, "Hey, we're here to speak for regions and to remind people that they should be treated equitably and equally across the country," I am prepared to support this amendment and send it back to the House of Commons and hope that they debate it this time.

Senator Downe: I want to say a few words. I didn't intend to, but I get so excited when anybody talks about Confederation Bridge tolls I can't help myself. Earlier, I mentioned the CN toll. I meant VIA, of course. VIA runs passenger service.

I want to speak about this for a moment. I started to talk about it. Colleagues have heard it before. Some of the newer senators, obviously, have not, but let me explain briefly. The Confederation Bridge is the condition of Prince Edward Island joining Canada. We end up with the yearly ferry subsidy for 35 years, plus the toll going to the company that constructed the Confederation Bridge. That toll is currently $47. Then, we have a situation where none of us really complained about the toll on the Confederation Bridge because we're very happy to have the bridge on Prince Edward Island. It's a tremendous addition, rather than ferry service that sometimes worked. Ferries broke down. They got stuck in the ice. None of that happens now. We're very grateful for the bridge.

But what happened was that, in 2015, the now Prime Minister promised that the new Champlain Bridge in Montreal would have no toll. Then the government announced that they're building a new bridge from Windsor to Detroit that would cost almost as much as the Champlain Bridge, if not more. But that will have a toll. So we have a situation where we have three bridges, all owned by the Government of Canada. The Confederation Bridge has a 35-year contract with a private company, but it's owned by the Government of Canada. The Champlain Bridge is owned by the Government of Canada. The Windsor bridge will be owned by the Government of Canada. Two of them have tolls, but the third does not. It goes back to Senator Griffin, Senator Duffy, Senator MacDonald and others talking about the unfairness of the treatment and the aggravations Atlantic Canadians feel about this unfairness. Then we look at the VIA Rail service. We heard earlier that Newfoundland and Labrador has no rail service. Your Honour, you would know that well, coming from there. Prince Edward Island lost theirs because of de-marketing, where it was just ruined over time. People said it was terrible service, and CN said, "We will take it away."

Then we look at the 2017 passenger report from VIA Rail, where, in their public report, they indicate that the subsidy on the train service between Montreal, Ottawa and Toronto is $36.97 per passenger. From Quebec, Montreal and Ottawa, the subsidy is $32.73. There is a good reason for the subsidies. It is good to get cars off the road. It's good to get people into trains. It's better for the environment. But why are we paying $47 to cross the bloody bridge, when people are subsidized by the Government of Canada to take the train when we don't have that option? It's grossly unfair.

Then we have the subsidy — and if you live in this area, senators, you have really hit the jackpot — the Toronto-Niagara route of VIA Rail is subsidized, per passenger, $128.42. The reason the government does that does not make economic sense, but there is a good public policy reason to do it. I support that, but where is the lack of public policy that we have to pay $47 to cross the bridge? Prince Edward Islanders, for example, have no passport office, the only province in Canada without a passport office. A couple of years ago, I went to the local grocery store. The guy said, "Would you sign the form?" He was going back to Lebanon for the summer. I signed the form. He rushed over to Halifax on short notice. Somebody was sick. He was going back. He left to come back to P.E.I. and got a phone call, "Oh, there was a mistake in the form." Back he went. Another $47, plus the gas, the wear and tear on the car and so on. Totally unequal treatment.

I must say that I changed my mind today because of the debate and the input I heard from other senators. This bill is a reflection of that attitude, that there is a double standard in this country. It's unacceptable. The bridge toll is unacceptable. When we see these subsidies to rail passengers in Central Canada, good for them, but it should also be good for us.

• (1600)

If the Government of Canada isn't going to put a toll on the Champlain Bridge, they shouldn't have a toll on the one to Prince Edward Island. Alternatively, put a toll on the Champlain Bridge, and we'll be quiet again, as we were before.

We're not saying there shouldn't be a toll. Also, the toll to Montreal would be smaller, because they get more traffic. I appreciate and understand that. Go ahead and put the toll on, and we'll bite the bullet on the $47, but this unequal treatment is totally unacceptable. Because of that, I've changed my position on the bill, and I will be supporting the amendment.

Some Hon. Senators: Hear, hear!

Hon. Marc Gold: It must be contagious. I hadn't expected to speak.

I respect everything that's been said. I respect the passion with which individual senators are defending their points of view and their regions, because it's indeed true that the Senate is a place where we as parliamentarians have to make sure that what we do is fair to all regions and the regions we come from. We are also here as members of the Parliament of Canada and have a responsibility to all Canadians.

I wanted to bring us back a little bit to the motion that's before us, and the proposal to insist on these two amendments and send the message back to the house.

Senator McCoy is absolutely right that questions of principle are really at the heart of when we should, as unelected members of Parliament, take a further step and return a message to the House of Commons. I want to suggest, honourable senators, that a number of the amendments we proposed initially that we sent to the other place raised more questions in principle. We talked a lot about regional interests. We heard a lot about the unfairness to Atlantic Canada, the Maritimes in particular. A guy from Montreal engaged in central Canada bashing. I've probably indulged in my share of Ontario bashing. I've lived in B.C., and my mother's family is from the South, so I know what it's like to be a bit at the periphery.

But the fact is that an important amendment we sent to the chamber on workers' rights and privacy raised fundamental principles of human rights, human dignity and workers' rights. We all felt strongly about it. It's not that it's a more important principle than equity between the regions, but it is certainly a principle that goes to the heart of what we do as senators and the role of the Senate, constitutionally, in relation to the elected House of Commons.

We gave it our best shot. The House of Commons did not see it our way. I think of Senators Gagné and Lankin who spoke so passionately about their disappointment but who nonetheless, for reasons that transcended their particular connections to those amendments, still concluded that, having done our best as unelected members of a complementary legislative chamber, it was appropriate to accept, however unhappily, the message, and find other ways to hold the government to account and follow studiously and diligently the issues as they unfold.

Official languages is another area of concern. What could be more fundamental to many of our understandings of what it is to live in this country?

I could go on, but I'll stop.

I will not support this amendment, as meritorious as the concerns were.

Some Hon. Senators: Oh, oh!

Senator Gold: I won't rise to react to sounds that Hansard may or may not record.

I think our constitutional duty has been discharged, and I urge you to vote against this amendment.

Hon. André Pratte: I will not support the amendment. I supported very strongly the amendment in regard to workers' right to privacy. I found it extremely difficult to accept the government's rejection of it. I thought for a long time about the idea of insisting on this amendment, as well as a few other amendments.

The reason I decided not to insist is the same reason why I would not insist on this most recent amendment, even though I sympathize with the many very good points made today. Senator Griffin mentioned that if we insisted on this amendment and it was rejected by the other place, then we would yield in the end, after insisting. That's not my concept of when the Senate should insist. I believe that when the Senate insists, the circumstances are so serious that we go in it for the long haul. When the Senate insists, the principles at play have to be so serious, so grave, that we're willing to go, even if it creates a constitutional crisis.

That's why it has to be exceptional — because there are fundamental or regional rights at play. It's not that we're willing to insist just so it plays in the media. It's that we're willing to go to the extent that it will create a deadlock, a constitutional crisis, and we're willing to fight for it because these are fundamental principles. That's why we insist.

If we insist just so that a deadlock, or so-called deadlock, will last a couple of days and then we yield, why insist? Is it just to embarrass the government for a couple of days? That's not my sense of insistence. I don't believe that. In the end, if we've decided that we will yield anyway, I don't think it's worth it.

I believe that if we've decided to yield in the end, we should yield right away. If we're willing to fight, okay. If you're willing to fight on it, let's fight until there is a constitutional crisis.

Some Hon. Senators: Hear, hear!

Some Hon. Senators: Oh, oh!

Senator Pratte: As far as I'm concerned, privacy rights, even though I strongly believe those rights should be defended in this case, and for regional rights, as important as they are, don't reach the threshold of being worthy of creating a constitutional crisis over.

Therefore, I will not vote in favour of this amendment.

Senator McCoy: Would Senator Pratte entertain, or endure, a question?

I think you made reference to the privacy rights of workers on trains, I believe it is. Could you answer this question: Is that rule going to affect a train worker in Alberta differently than a train worker in Quebec or Nunavut, or is it going to affect all train workers equally across Canada?

Senator Pratte: As far as I understand, it will affect all locomotive workers across Canada.

The Hon. the Speaker: Are senators ready for the question?

Some Hon. Senators: Question.

The Hon. the Speaker: In amendment, it was moved by the Honourable Senator Tkachuk, seconded by the Honourable Senator Raine:

> That the motion be not now adopted but that it be amended —

Shall I dispense?

Some Hon. Senators: Dispense.

The Hon. the Speaker: All those in favour of the motion will please say "yea."

Some Hon. Senators: Yea.

The Hon. the Speaker: All those opposed to the motion will please say "nay."

Some Hon. Senators: Nay.

The Hon. the Speaker: In my opinion, the "yeas" have it.

And two honourable senators having risen:

The Hon. the Speaker: Is there agreement on the bell? It will be a one-hour bell, with the vote taking place at 5:09 p.m.

Call in the senators.

• (1710)

Motion in amendment of the Honourable Senator Tkachuk agreed to on the following division:

YEAS
THE HONOURABLE SENATORS

Andreychuk	McInnis
Ataullahjan	McIntyre
Batters	Mockler
Beyak	Neufeld
Black (*Ontario*)	Ngo
Boisvenu	Oh
Carignan	Patterson
Dagenais	Plett
Downe	Poirier
Doyle	Raine
Duffy	Richards
Eaton	Seidman
Frum	Smith
Galvez	Stewart Olsen
Griffin	Tannas
Housakos	Tkachuk
Lovelace Nicholas	Unger
MacDonald	Verner
Maltais	Wallin
Marshall	Wells
Martin	White—43
McCoy	

NAYS
THE HONOURABLE SENATORS

Bellemare	Hartling
Bernard	Jaffer
Boniface	Joyal
Bovey	Lankin
Boyer	Massicotte
Christmas	McCallum
Cools	Mégie
Cordy	Mercer
Coyle	Mitchell

Dawson	Moncion
Day	Munson
Deacon	Omidvar
Dupuis	Pate
Dyck	Petitclerc
Eggleton	Pratte
Furey	Ringuette
Gagné	Saint-Germain
Gold	Sinclair
Greene	Wetston—39
Harder	

ABSTENTIONS
THE HONOURABLE SENATORS

Brazeau	Cormier—2

[*Translation*]

OIL TANKER MORATORIUM BILL

FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-48, An Act respecting the regulation of vessels that transport crude oil or persistent oil to or from ports or marine installations located along British Columbia's north coast.

(Bill read first time.)

The Hon. the Speaker: Honourable senators, when shall this bill be read the second time?

(On motion of Senator Harder, bill placed on the Orders of the Day for second reading two days hence.)

[*English*]

BUSINESS OF THE SENATE

The Hon. the Speaker: It being 5:15 p.m., I must interrupt the proceedings for the ringing of the bills on the deferred vote on the third reading of Bill S-219, which will occur at 5:30 p.m.

Call in the senators.

• (1730)

NON-NUCLEAR SANCTIONS AGAINST IRAN BILL

THIRD READING NEGATIVED

On the Order:

> Resuming debate on the motion of the Honourable Senator Tkachuk, seconded by the Honourable Senator Carignan, P.C., for the third reading of Bill S-219, An Act to deter Iran-sponsored terrorism, incitement to hatred, and human rights violations.

The Hon. the Speaker: Honourable senators, the question is as follows: It was moved by the Honourable Senator Tkachuk, seconded by the Honourable Senator Carignan:

> That Bill S-219, An Act to deter Iran-sponsored terrorism, incitement to hatred, and human rights violations, be read the third time.

Motion negatived on the following division:

YEAS
THE HONOURABLE SENATORS

Andreychuk	Mockler
Ataullahjan	Neufeld
Batters	Ngo
Beyak	Oh
Boisvenu	Patterson
Carignan	Plett
Dagenais	Poirier
Doyle	Raine
Eaton	Seidman
Frum	Smith
Housakos	Stewart Olsen
MacDonald	Tannas
Maltais	Tkachuk
Marshall	Unger
Martin	Wells
McInnis	White—33
McIntyre	

NAYS
THE HONOURABLE SENATORS

Bellemare	Greene
Black (*Ontario*)	Griffin
Boniface	Harder
Bovey	Jaffer
Boyer	Joyal
Brazeau	Lankin

Christmas	Lovelace Nicholas
Cools	Massicotte
Cordy	McCallum
Cormier	McCoy
Coyle	Mégie
Dawson	Mercer
Day	Mitchell
Deacon	Moncion
Downe	Munson
Duffy	Omidvar
Dupuis	Pate
Dyck	Petitclerc
Eggleton	Pratte
Gagné	Ringuette
Galvez	Sinclair
Gold	Wallin—44

ABSTENTIONS
THE HONOURABLE SENATORS

Bernard	Saint-Germain
Hartling	Wetston—5
Richards	

• (1740)

TRANSPORTATION MODERNIZATION BILL

BILL TO AMEND—MESSAGE FROM COMMONS—MOTION, AS AMENDED, FOR CONCURRENCE IN COMMONS AMENDMENTS AND NON-INSISTENCE UPON SENATE AMENDMENTS ADOPTED—TRANSPORT AND COMMUNICATIONS COMMITTEE AUTHORIZED TO REPORT ON INSISTENCE UPON CERTAIN SENATE AMENDMENTS

On the Order:

Resuming debate on the motion, as amended, of the Honourable Senator Harder, P.C., seconded by the Honourable Senator Bellemare:

That the Senate agree to House of Commons amendment 4, as well as House of Commons amendments 1, 2 and 3 made to its amendments 6, 7(b) and 9 to Bill C-49, An Act to amend the Canada Transportation Act and other Acts respecting transportation and to make related and consequential amendments to other Acts;

That the Senate do not insist on its amendments 1(a)(i), 1(a)(ii), 1(b), 3, 4, 5(a)(i), 5(a)(ii), 5(a)(iii), 5(b), and 10(a), to which the House of Commons has disagreed;

That the Senate insist on its amendments 7(c) and 8, to which the House of Commons has disagreed; and

That, pursuant to rule 16-3, the Standing Senate Committee on Transport and Communications be charged with drawing up the reasons for the Senate's insistence on its amendments and present its report, with the reasons for the insistence, on or before the later of May 10, 2018, and the second day the Senate sits after the adoption of this order; and

That, once the reasons for the insistence have been agreed to by the Senate, a message be sent to the House of Commons to acquaint that house accordingly.

The Hon. the Speaker: Are honourable senators ready for the question?

Hon. Senators: Question.

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion?

Some Hon. Senators: Agreed.

Some Hon. Senators: On division.

(Motion as amended agreed to, on division.)

[*Translation*]

EXPUNGEMENT OF HISTORICALLY UNJUST CONVICTIONS BILL

BILL TO AMEND—THIRD READING—DEBATE ADJOURNED

Hon. René Cormier moved third reading of Bill C-66, An Act to establish a procedure for expunging certain historically unjust convictions and to make related amendments to other Acts.

He said: Honourable senators, I rise today as the sponsor of Bill C-66, An Act to establish a procedure for expunging certain historically unjust convictions and to make related amendments to other Acts.

I beg your indulgence, dear colleagues, for the time it will take me to deliver my speech, because starting today I intend to take to heart the good suggestions made by the interpreters during the consultation on the translation services review, and I will not speak so quickly when delivering speeches. On a more personal note, I admit that this suggestion is entirely consistent with the great advice I received from my mother, who is 95 and once told me:

You came into this world so quickly it seemed like you thought you showed up late for life. Relax.

I want to begin by saying that my speech is intended to be a presentation on the consultations and important work that has been done since this bill arrived in the Senate. I also want to highlight the issues that were taken into consideration throughout the study of the bill. They will shed light on the reasons why the committee supports the passage of this bill without proposing amendments but instead issuing a series of very important

observations in order to have the government take steps as soon as possible to remove the obstacles that currently prevent certain historical injustices from being included in Bill C-66.

I would like to thank the Chair of the Standing Senate Committee on Human Rights, the Honourable Wanda Elaine Thomas Bernard, and the committee members, who showed great sensitivity and dedication in studying this bill. I especially want to acknowledge the hard work of the Honourable Raynell Andreychuk, the critic for this bill, whose experience, openness and professionalism were essential to our work. Without her, our study of Bill C-66 certainly would not have produced such excellent observations. I also want to thank support staff for making sure that our committee work runs smoothly.

As its title indicates, Bill C-66 would correct the historic injustice of the criminalization of consensual sexual activity between same-sex adults. The bill recognizes that the criminalization of an activity may constitute a historical injustice because, among other things, were it to occur today, it would be inconsistent with the Canadian Charter of Rights and Freedoms.

Furthermore, the activity must no longer constitute an offence under an existing federal law. To expunge these unfair convictions, this bill would implement a new procedure to permanently destroy records of conviction for offences involving a consensual sexual activity between same-sex partners that would be legal today. This procedure would give the Parole Board of Canada the power to expunge convictions deemed to be unjust by permanently destroying and removing the judicial records of those convictions from federal repositories, in other words, all federal databases.

Anyone who was wrongly convicted of an offence would be deemed to have never been convicted of that offence. The Canadians who would be affected by this measure are members of the LGBTQ2 community who were unfairly convicted under the provisions of the Criminal Code or the National Defence Act related to the offences of gross indecency, buggery and anal intercourse.

[*English*]

Honourable senators, while I do applaud the government's initiative with this bill, as it is certainly a first step in the right direction, I do understand and share the disappointment expressed by an important number of witnesses and colleagues on the limited scope of the bill and on its incapacity to address, for now, other key pieces of legislation and Criminal Code provisions that have been used in a discriminatory fashion against members of the LGBTQ2 community.

The committee shared the community's concerns and requested that the government address the inconsistency between the Prime Minister's apology to LGBTQ2 Canadians and the offences cited in the schedule of Bill C-66, notably the exclusion from the schedule of the bawdy house provisions of the Criminal Code.

This inconsistency was a key component of the pushback the bill received from LGBTQ2 groups, scholars and allies. I strongly believe that this resistance could have been avoided if sufficient stakeholder consultations would have taken place before the drafting of the bill.

Indeed, during the committee hearings and the calls I had with stakeholders, they told us that never, at any point in the drafting process, had they been consulted or been made aware of the upcoming bill. Most of the consultations were done in preparation of the Prime Minister's apology, not in preparation for this piece of legislation.

In order to address these concerns surrounding the lack of consultations, the committee, in its observations, has strongly requested that the Department of Public Safety and Emergency Preparedness launch, as soon as Bill C-66 receives Royal Assent, consultations with stakeholders and subject-matter experts to address other sections of the Criminal Code that were applied in a discriminatory fashion against the LGBTQ2 community, such as, but not limited to: indecent acts, immoral theatrical performances, obscenity, operating or being found in a bawdy house, nudity, vagrancy, criminal HIV non-disclosure.

[*Translation*]

The legal obstacles preventing the inclusion in this bill of sections of the Criminal Code that were used in a discriminatory fashion against the LGBTQ2 community must be removed as soon as possible.

Over the past few weeks, the Standing Senate Committee on Human Rights has heard from key witnesses who have expressed a significant number of concerns, some of which echo the issues our colleagues raised in this chamber during their speeches at second reading. All of the witnesses, including professors, lawyers, historians, archivists, victims of the LGBTQ2 purge and representatives of the Canadian HIV/AIDS Legal Network, welcomed the bill, but they said they would like to see it expanded to include more victims. That's also what I heard from LGBTQ2 organizations and individuals I met with in my office as the sponsor of this bill.

To be fair, we have to recognize that the majority of the witnesses and groups that appeared before the committee were from the Toronto and Montreal areas. Few organizations from elsewhere in Canada expressed concerns about the current wording of the bill.

[*English*]

Now, let me guide you through some of the concerns and demands that were shared with the committee by civil society groups and by some of our honourable colleagues during second reading speeches and committee proceedings.

The first and most prominent concern raised in committee by various LGBTQ2 groups and allies was the exclusion of bawdy house provisions from the bill's annex.

The exclusion of section 210 of the Criminal Code from Bill C-66 is perceived by some as a perpetuation of discriminatory laws and practices against the LGBTQ2 communities.

• (1750)

The Human Rights Committee also agreed in its observations that there is concern about the inconsistency between the Prime Minister's apology to LBGTQ2 Canadians delivered November 28, 2017, and the offences cited in the schedule of Bill C-66. Some have asked us to intervene and correct this.

Professor Tom Hooper mentioned the following:

> Senators, you are duty-bound to ask the government why they included bawdy houses in the apology but not in this bill. You must ask them what a bawdy house is in 2018. Why is this law still on the books?

[*Translation*]

Of course, that statement struck me and pushed me personally to explore the idea of possibly proposing an amendment to the bill addressing the sections of the Criminal Code that deal with bawdy houses. Our efforts with the Office of the Law Clerk and the Parliamentary Counsel to the Senate, as well as the opinions of legal advisors from the Department of Justice, helped us understand the complexity of that option and assess the real impact such an amendment would have on the law and its implementation in the short term.

First of all, I would remind the chamber that the bill's main purpose is to examine the Criminal Code offences that are no longer in force today. Unlike the three sections of the Criminal Code and the National Defence Act that appear in the schedule to Bill C-66, the sections of the Criminal Code on bawdy houses, vagrancy, indecent acts, obscenity, nudity and the criminal non-disclosure of HIV/AIDS remain in effect today.

In the case of bawdy houses, the Supreme Court of Canada decisions in *Labaye*, in 2005, and *Bedford*, in 2013, do not render section 210 of the Criminal Code entirely unconstitutional. Rather, those Supreme Court decisions narrow the scope and application of section 210. In the *Labaye* decision, the court clarifies the criteria of what constitutes an indecent acts offence, namely, physical or psychological harm caused to participants in the impugned activity, or conduct that perpetuates negative or demeaning images of humanity. In *Bedford*, the Supreme Court struck down section 210 with regard to prostitution, pointing out that that provision has a prejudicial effect on the safety of the prostitute and therefore infringed the right to security of the person, guaranteed under section 7 of the Charter.

[*English*]

Before we contemplate the idea of amending the bill to add bawdy house provisions or those on vagrancy, indecent acts, immoral theatrical performances, obscenity, nudity and criminal HIV non-disclosure, we must consider that the difficulty with adding those other convictions to Bill C-66's schedule is that those laws are not inherently unconstitutional. And as I mentioned previously, those laws remain in effect.

If we were to add them to the schedule, we would simply burden the Parole Board of Canada with the requirement to analyze and determine, decades after the fact, whether each conviction made under one of these sections was legitimate or abusive.

[*Translation*]

Shawn Scromeda, senior counsel for the Department of Justice, pointed out that the Parole Board of Canada would wind up in the peculiar position of having to retroactively read the police officer or prosecutor's mind in order to determine whether charges would not have been laid in a particular case had the offender not been gay.

That is why an amendment would not only delay the passage of this bill, or even make it somewhat unlikely to be passed in the near future, but it would also hamper and delay the expungement process once the bill became law.

Furthermore, to address issues related to the other offences that were excluded from the schedule of the bill, it would be more appropriate and urgent for the Minister of Justice to commit to reviewing and "cleaning up" the Criminal Code in order to clarify elements or criteria that have been deemed invalid by a superior court. The Minister of Public Safety and Emergency Preparedness could then suggest specific items that could be added to the schedule to the bill, as provided for by clause 23 of Bill C-66.

I'm sure you understand that the thousands of LGBTQ2 Canadians who were swept up in police raids on bawdy houses deserve the right to expungement every bit as much as the individuals who are covered by the current bill.

[*English*]

Witnesses and civil society groups have also expressed concerns about the destruction of expunged records and whether this would have the effect of eliminating the historical evidence of discrimination or simply historically valuable and relevant archive material. While I share these concerns, and I do believe we must preserve the memory of these dark times in order to keep ourselves from repeating the same injustices, it is important that we keep in mind that only those who apply for expungement will have their criminal records destroyed and that the choice to preserve or destroy these records belongs only to them or their descendants. References to arrest charges and convictions in other documents, such as court transcripts or records of investigations, will remain.

[*Translation*]

In addition, to address witnesses' concerns about the destruction of records and archives that might be historically relevant, the committee asks in its observations that the Parole Board of Canada inform applicants about which specific documents or records will be directly or indirectly destroyed following the process and which will remain intact. Applicants should also be informed of their right to access copies of their file and other documents, pursuant to the Privacy Act, before submitting an application for expungement.

The age of consent was another concern that was raised. When she testified before the committee, Angela Chaisson, one of the representatives of the Criminal Lawyers' Association, shared her concerns about the age of consent indicated in clause 25(c) of the bill. Ms. Chaisson is concerned that the bill violates a fundamental tenet of Canadian law by not restoring the age of consent and applying the current age to acts committed in the past.

The bill allows the expungement of a file only in cases where the defendant's sexual partner was 16 years of age or older when the act was committed. This is the current age of consent, not the age of consent that applied at the time that the offence was committed. Furthermore, the age of 16 does not correspond to the age of consent historically required for similar heterosexual activities.

The government decided to strike a balance between its intention to make amends for historical injustices and its responsibility to protect minors against sexual exploitation. When the minister appeared before the committee, he clearly indicated that his decision to not lower the age of consent to 14 years of age is motivated by his desire to have an expungement order process which, pursuant to the preamble and clauses 12 and 23 of Bill C-66, solely addresses activities that are not prohibited under the Criminal Code when the file is examined.

[*English*]

In light of these considerations of the complexity that arises from the need to strike the right between avoiding a compounding effect on the very injustices the bill seeks to remedy by keeping the age of consent at 16 and attempting to respect the current legal framework meant to protect minors from sexual exploitation, the committee proposes that the Department of Public Safety and Emergency Preparedness should engage and consult with the LBGTQ2 community and the Justice Department to clarify the criteria for expungement so as to also include consideration of the law of consent and the age of consent at the time of the conviction.

This must be done to ensure that the bill becomes more consistent with the general spirit of subsections 11(g) and 11(i) of the Charter.

[*Translation*]

The age of consent issue must be resolved following a serious consultation of the Department of Public Safety and the Department of Justice with experts from the LGBTQ2 community.

Honourable senators, although it is our right and our duty as senators to ensure that these constitutional issues are considered in the legislation, I am of the opinion that we must urge the government to work more closely with the LGBTQ2 community so that, together, they can meet the expectations surrounding the apology and address the gaps in the bill.

• (1800)

Honourable colleagues, the committee made other important observations during its study of Bill C-66. First, the committee deemed it necessary, following the interventions of Professors Hooper and Kinsman, for the Government of Canada to hold consultations in order to clarify the definition and criteria of what constitutes an historic injustice.

[*English*]

Clarifying the definition and criteria of what constitutes a "historical injustice" are necessary steps for the minister and the relevant federal departments and agencies in order to determine whether convictions for offences involving indecency, as defined prior to the Supreme Court of Canada's decision in *R. v. Labaye* or convictions for prostitution-related offences held to be unconstitutional by the Supreme Court of Canada, in *Canada (Attorney General) v. Bedford*, comply with the definition and criteria of a "historical injustice."

Another of the committee's observation states, when considering the expungement process being set up by the bill, that senators and witnesses were concerned about the fact that the ". . . process appears to keep a large part of the burden of proof — to prove eligibility for expungement — on the victims, rather than on the Crown."

[*Translation*]

I want to especially commend the contribution and expertise of my colleague, Senator Kim Pate, who made an important observation in order to urge the Minister of Public Safety and Emergency Preparedness to review the requirement to file an application to have a criminal record expunged. Senator Pate's observation seeks to encourage the minister to set up a system to have records automatically expunged, somewhat like the process in Germany, or the posthumous expungement model in effect in the United Kingdom.

For obvious reasons, honourable colleagues, the committee wants to draw the attention of the Department of Public Safety and Emergency Preparedness, the Royal Canadian Mounted Police, and the Parole Board of Canada to the need of communicating clearly and in a manner that is accessible to all Canadians, especially members of the LGBTQ2 community, the process for submitting an application and the eligibility criteria.

In closing, honourable colleagues, I must admit that initially this bill seemed simple, but it was much more complex than I anticipated. That is why, throughout my sponsorship of this bill, my staff and I carefully listened to and studied the various requests of the groups and individuals we met with. My team duly and carefully analyzed any advice given by the department, the minister's office, and witnesses.

Thanks to the testimony that was heard, the expertise of my colleagues, the valuable insight of the Office of the Law Clerk and the Parliamentary Counsel of the Senate, we were able to determine the best approach for improving and implementing this bill in a timely manner.

I would like to thank my parliamentary advisor, Alexandre Catta, for his heartfelt and diligent efforts on this bill. He did a remarkable job.

As people often say about bills, Bill C-66 is not perfect. As my honourable colleague Senator Gold so rightly said in his speech at second reading, and I quote:

[*English*]

> . . . Bill C-66 represents the first, but not necessarily the final, step in addressing the injustices that the enforcement of the criminal law visited upon members of the LGBTQ2 community. And that should not be minimized. Bill C-66 will allow for the expungement of the criminal of records of hundreds, indeed thousands, of Canadians who we now judge to be wrongfully convicted. That is both right and good. Let us not allow the better to be the enemy of the good.

[*Translation*]

Bill C-66 is a work in progress, but it warrants our commitment to continue this work so that any flaws can be remedied in the near future. Since I myself am a member of the LGBTQ2 community, my honourable colleagues will understand why I am so firmly committed to monitoring this situation and doing everything in my power to continue this work, which seeks to address the historic injustices perpetrated against members of this community.

It is true that the bill is a work still in progress. However, it is also true that, like Franz Shubert's *Unfinished Symphony* or Leonardo da Vinci's unfinished works, this bill is still a good bill because it helps to ease the suffering of some of our fellow Canadians. Is that not, honourable colleagues, one of our noblest duties as members of this upper chamber? Thank you.

[*English*]

Hon. A. Raynell Andreychuk: Honourable senators, after a very extensive speech given by my colleague Senator Cormier, I would like to ensure that my comments are in line with what he has said. I'd like to reflect on it and speak to the bill tomorrow, so I adjourn the debate.

(On motion of Senator Andreychuk, debate adjourned.)

CRIMINAL CODE
DEPARTMENT OF JUSTICE ACT

BILL TO AMEND—SECOND READING—
DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Sinclair, seconded by the Honourable Senator Mitchell, for the second reading of Bill C-51, An Act to amend the Criminal Code and the Department of Justice Act and to make consequential amendments to another Act.

Hon. Mobina S. B. Jaffer: Honourable Senators, I rise today to speak on Bill C-51, An Act to Amend the Criminal Code and the Department of Justice Act.

I would like to thank Senator Sinclair, the sponsor of Bill C-51, who has clearly set out the main elements of this bill.

I would also like to thank Senator Dyck, who raised the issue for the elimination of peremptory challenges, which has been used to discriminate against Aboriginal jurors.

I would also like to thank Senator Pate, who, amongst many other things, has spoken about mandatory sentencing.

And I would also like to thank Senator McIntyre, the critic of Bill C-51, who has also set out several concerns that we will examine at the committee level.

Bill C-51 will affect what I believe is a fundamental part of our criminal law, that is, the right to silence. The right to silence is a fundamental right of all Canadians. I owe this conviction to my principal, mentor, and later, law partner, the Honourable Thomas Dohm., QC.

Mr. Dohm taught me that there is always a power imbalance when a person is charged with a criminal offence. On one hand, the Crown can use the whole power of the state against the accused. On the other hand, as an individual, the accused has very little power to wield by comparison to the power of the state.

Happily, our law system does provide some tools against the overwhelming power of the Crown, or the state; that is, the accused's legal rights in criminal law, especially the right to silence. Mr. Dohm would always stress to me the importance of protecting the rights of the accused. He always said to me that the right to silence was sacrosanct in criminal law.

The right to silence is special in Canada, since it is not protected by just one section of the Canadian Charter of Rights and Freedoms, but by two: sections 7 and 11.

Combined, these Charter rights create a system where accused people cannot be compelled to be witnesses against themselves. The Crown may only use statements that have been made voluntarily by the accused to the police as evidence, and even then those statements are only admissible if the accused has been informed of their legal right to counsel.

The right to silence counterbalances the power that the Crown has over the accused. When the police arrest the accused who has been charged with a crime, the accused is on his own against a highly trained police force that is working to help the prosecution and build a case against the accused. When the case is later brought to trial, anything that is disclosed to the prosecution can also be used to help build the government's case.

To paraphrase the Department of Justice in its summary on the right to silence provided to us, the accused has the right to "sit back, secure his or her silence and put the Crown to its proof." In other words, it is the Crown's job to prove the case against the accused. The accused should never be forced to make a case against themselves.

• (1810)

Honourable senators, I know you agree with me that we all guard the right to silence zealously. Given the importance of this right, it is of great concern to me that clause 25 of Bill C-51 could possibly violent the right to silence.

Clause 25 of Bill C-51 will modify section 278.92 of the Criminal Code to forbid, and I quote:

> . . . record relating to a complainant that is in the possession or control of the accused — and which the accused intends to adduce. . .

The application to use documents at trial must be made to the court 60 days before the trial. Simply put, Bill C-51 would create a system of positive disclosure obligation.

Honourable senators, what do I mean by "a positive disclosure obligation"? This is where the accused has to show the prosecution any documents that they could possibly want to use over the course of the trial, including documents that may be used in cross-examination of the prosecution's witnesses.

Honourable senators, the reason for the inclusion of this section may be in response to the controversial *Jian Ghomeshi* case that concluded last year. In the *Ghomeshi* case, the defence had several emails, texts and other electronic records that contradicted what the complainant said. Eventually, these would be a significant part of why Ghomeshi would be acquitted, since the complainant's testimony was portrayed as unreliable.

People from across the country were outraged by his acquittal and rightly called for some kind of change that would prevent a case like this from ever happening again.

I have no firsthand knowledge of any part of the *Ghomeshi* case; neither do I know any parties in this case. From far, some within the legal community hold the opinion that the police or prosecutor should have spent more time with the complainants to find out about all the emails and then there may not have been an acquittal. I have no personal knowledge of the amount of time they did spend with the complainants.

If more time and resources are spent on cases, we do not have to erode right to silence. Senators, I believe that there are ways in which we can help the complainant and we can have a stronger case, and that is in providing more resources to make sure that the trial is well resourced and the complainant is well prepared. We do not need to erode the right to silence.

Under this bill the complainant will have her own lawyer. This will further help the complainant. This is a positive step in this bill. I'm happy about that because in the future the complainant will have her own lawyer who will prepare her thoroughly.

Honourable senators, the goal that the government is pursuing here is an admirable one. I support the rest of the bill, and I support the spirit of what the government is trying to do. Sexual assault is one of the most horrifying forms of violence that a person could ever experience and its victims do have rights that should be respected.

There are many lessons learned from the *Ghomeshi* case that I'm sure the police and the Crown has implemented, so we do not need to pass laws to erode the right to silence.

Clause 25 of Bill C-51 places the accused charged with sexual assault charge in a clear and unfair disadvantage. To quote Megan Savard of the Canadian Legal Association, who appeared before the Standing Committee on Human Rights in the other place:

> . . . if passed into law, this will be the first time in Canadian law where a criminal defendant, in advance of trial, has to disclose his case strategy, the fruits of his investigation and the lines of questioning to both the prosecutor, and the prosecution's key witness.

Several lawyers from across the country have spoken out against this erosion of right to silence as it completely undermines our adversarial legal system. Instead of determining innocence, it forces the accused to help the prosecution build their case. For example, in their submission on Bill C-51, the Criminal Lawyers' Association stated:

> The right to silence has been described by the Supreme Court as "intimately linked to our adversarial system of criminal justice and the presumption of innocence" and "the single most important organizing principle of criminal law." It encompasses the defendant's right not to participate in building the Crown's case against her.

For those reasons, the Supreme Court has explained that disclosure of relevant material in advance of trial is a one-way street. There is no general defence disclosure obligation. The accused is — and I quote from the Supreme Court — "entitled to assume a purely adversarial role towards the prosecution. The defence disclosure obligation in Bill C-51 is in tension with this right."

Presently, the accused has to disclose to the Crown in the following circumstances. First, if there are expert reports, business records or if the accused is going to use the defence of an alibi. There are only three very small, specific places where the accused has to give the documents beforehand and this is held very strongly by the courts because they have to respect the rights of the accused.

Honourable senators, I would like to give you another perspective. I liken trials with the building of a house. Before a trial, disclosure that alleges facts of the complainant's case against the accused are given by the Crown to the accused. This is like a blueprint of a house. After disclosure, the defence can use this disclosure blueprint to understand what the complainant and the prosecution will allege at trial, and the accused will use this disclosure to build his own case. However, just as blueprints only provide a plan and do not show the finishing touches or details on a house, trials are never simple reflections of disclosure or blueprints.

During the trial, the defence is given the opportunity to cross-examine the complainant and the witnesses and put the complainant's case to the test. This allows the testing of

credibility of the testimony of the complainant and the witnesses of the evidence that has been presented over the trial by the complainant.

The process of cross-examination allows for the judge or jury to examine the testimony and evidence before them critically and to come to an informed decision as to the credibility of the complainant. This step in the trial is especially important for the accused as it is the cross-examination that will enable the judge or jury to decide on the guilt of the accused.

In most cases, defence lawyers do not exactly know what evidence there will be during cross-examination. As builders do not know what finishing touches a house will need from the blueprints alone, lawyers will decide during the trial what evidence they will need to produce during cross-examination to prove the accused's case.

The evidence the lawyers will produce will be determined by what and how the complainant and other witnesses have testified at trial. The defence lawyers may use all the documents that they have in their possession or may use some of them openly. It all depends on what the defendant chooses to use from the testimony the Crown has led.

If we do not amend Bill C-51, the accused will have to share the documents they want to use at trial of their case before having an idea of how the trial could possibly unfold. Cross-examination would lose some of its meaning too, since it would not involve putting the complainant's claims to the test. Instead, the complainant will be alerted to the accused's case.

Honourable senators, this is undeniably wrong. Our whole justice system has been based on protecting the right to silence. Cross-examination has withstood the test of time and has been used to stop many innocent people being wrongly convicted. If Bill C-51 passed without any amendment, this will no longer be the case.

Once again, I understand the motivation behind Bill C-51. Victims of horrifying violence like sexual assault need to be protected with rights of their own and privacy. However, as former Chief Justice Beverley McLachlin famously said last year: "No one has the right to a particular verdict."

While the rights of victims are undeniably important, they cannot overshadow the rights of accused people. I simply cannot agree with a part of the bill that will take away the rights of the accused people.

• (1820)

Senator Pate tells us almost on a daily basis how vulnerable and marginalized people often find themselves at odds with our justice system and end up in prison, and we heard yesterday the gut-wrenching account from Senator Sinclair about women in prison, especially Aboriginal women. Senators, we need to be vigilant about protecting the right to silence.

Our own studies with the Standing Senate Committee on Human Rights only confirm how important it is to protect these rights. Over the last year, under the leadership of Senators Bernard, Ataullahjan and Cordy, the committee has heard about countless cases where our justice system has mistreated marginalized people in pursuit of justice for crime victims. There are many people in prison today who were not represented well, and their rights were infringed.

If we pass Bill C-51 in its current form, we are only making these people more vulnerable. We are also jeopardizing the study we are all very carefully following. What is the point of doing a study on the rights of prisoners and then, at the same time, taking away the rights of accused?

Ultimately, criminal law is about achieving a balance in the name of achieving justice for all people, both the accused and the victims. Our belief in the pursuit of justice is what led to the creation of the Charter and its protection of the right to silence. To upset this balance is to abandon our pursuit of justice.

I'm pleased to say the Minister of Justice also understands the importance of the right to silence, since she has accepted an amendment in the other place that no longer forces the accused to disclose records that are unrelated to the complainant.

Unfortunately, Bill C-51 still violates Canadians' right to silence and places the accused at an unfair advantage when these cases go to trial. It is for this reason that I urge us all to examine Bill C-51 carefully as it goes to committee stage and third reading and study how forced disclosure obligations violate the right to silence.

I have faith that our Legal and Constitutional Affairs Committee under the leadership of Senator Joyal will do the appropriate study on Bill C-51 before modifying one of our most sacrosanct rights: the right to silence when charged with a criminal offence.

Thank you.

(On motion of Senator Martin, debate adjourned.)

BUSINESS OF THE SENATE

The Hon. the Speaker: Honourable senators, it being past 4 p.m. and the Senate having come to the end of Government Business, pursuant to the orders adopted on February 4, 2016, and May 8, 2018, I declare the Senate adjourned.

(At 6:24 p.m., pursuant to the orders adopted by the Senate on February 4, 2016, and May 8, 2018, the Senate adjourned until 1:30 p.m., tomorrow.)

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